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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

Matt Blunt

Secretary of State

MISSOURI REGISTER

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IN THIS ISSUE:

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
March 1, 2004	**April 1, 2004**	April 30, 2004	May 30, 2004
March 15, 2004	**April 15, 2004**	April 30, 2004	May 30, 2004
April 1, 2004	**May 3, 2004**	May 31, 2004	June 30, 2004
April 15, 2004	**May 17, 2004**	May 31, 2004	June 30, 2004
May 3, 2004	**June 1, 2004**	June 30, 2004	July 30, 2004
May 17, 2004	**June 15, 2004**	June 30, 2004	July 30, 2004
June 1, 2004	**July 1, 2004**	July 31, 2004	August 30, 2004
June 15, 2004	**July 15, 2004**	July 31, 2004	August 30, 2004
July 1, 2004	**Aug. 2, 2004**	Aug. 31, 2004	Sept. 30, 2004
July 15, 2004	**Aug. 16, 2004**	Aug. 31, 2004	Sept. 30, 2004
August 2, 2004	**September 1, 2004**	September 30, 2004	October 30, 2004
August 16, 2004	**September 15, 2004**	September 30, 2004	October 30, 2004
September 1, 2004	**October 1, 2004**	October 31, 2004	November 30, 2004
September 15, 2004	**October 15, 2004**	October 31, 2004	November 30, 2004
October 1, 2004	**November 1, 2004**	November 30, 2004	December 30, 2004
October 15, 2004	**November 15, 2004**	November 30, 2004	December 30, 2004
November 1, 2004	**December 1, 2004**	December 31, 2004	January 30, 2005
November 15, 2004	**December 15, 2004**	December 31, 2004	January 30, 2005
December 1, 2004	**January 3, 2005**	January 29, 2005	February 28, 2005
December 15, 2004	**January 18, 2005**	January 29, 2005	February 28, 2005

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	***Code of State Regulations***	**Division**	**Chapter**	**Rule**
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

EMERGENCY AMENDMENT

13 CSR 40-2.375 Medical Assistance for Families. The division is amending section (1).

PURPOSE: This amendment modifies the income limit for the Medical Assistance for Families program after June 30, 2004.

EMERGENCY STATEMENT: Missouri's economic status requires emergency measures to contain cost wherever feasible. In order to meet SFY 2005 projected revenues, the 92nd General Assembly, in House Bill 1011, approved core reductions to the Medical Assistance for Families program, totaling $3.6 million. Beginning July 1, 2004 Medicaid coverage for Medical Assistance for Families is modified so that the income limit is reduced from seventy-seven percent (77%) of the federal poverty level to seventy-five percent (75%) of the federal poverty level. Promulgation of this emergency amendment is necessary to preserve the compelling governmental interest to achieve a balanced state budget for SFY 2005. A proposed amendment, which covers the same material, is published in this issue of the ***Missouri Register****. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the* ***Missouri*** *and* ***United States Constitutions****. The division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed June 7, 2004, effective July 1, 2004, and expires December 27, 2004.*

(1) The income limit for persons to be eligible for the Medical Assistance for Families program established pursuant to section 208.145, RSMo is at or below *[seventy-seven percent (77%)]* **seventy-five percent (75%)** of the federal poverty level for the household size.

AUTHORITY: sections 207.020 and 208.145, RSMo 2000. Emergency rule filed June 7, 2002, effective July 1, 2002, expired Dec. 27, 2002. Original rule filed June 11, 2002, effective Dec 30, 2002. Emergency amendment filed June 7, 2004, effective July 1, 2004, expires Dec. 27, 2004. A proposed amendment covering this same material is published in this issue of the ***Missouri Register****.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program

EMERGENCY AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is changing section (11).

PURPOSE: The emergency amendment changes section (11). This amendment will establish the Federal Reimbursement Allowance (FRA) assessment for SFY 2004 at five and thirty-two hundredths percent (5.32%).

EMERGENCY STATEMENT: The Division of Medical Services finds that this emergency amendment is necessary to preserve a compelling governmental interest of providing health care to individuals eligible for the Medicaid program. An early effective date is required in that the emergency amendment made adjustments to the Federal Reimbursement Allowance for SFY 2004 to ensure access to hospital services for indigent and Medicaid recipients at hospitals that have relied on Medicaid payments in meeting those needs. The Division of Medical Services also finds an immediate danger to public health and welfare which requires emergency actions. If this emergency amendment is not enacted, it will cause significant cash flow shortages and financial strain on all hospitals which service more than nine hundred thousand (900,000) Medicaid recipients. This will, in turn, result in an adverse impact on the health and welfare of those in need of medical care and treatment. A proposed amendment, which covers the same material, is published in this issue of the ***Missouri Register****. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the* ***Missouri*** *and* ***United States Constitutions.*** *The Division of Medical Services believes this emergency amendment to be fair to all interested parties under the circumstances. The emergency amendment was filed June 7, 2004, effective June 17, 2004, and expires December 13, 2004.*

(11) Federal Reimbursement Allowance (FRA) for State Fiscal Year 2004. The FRA assessment for State Fiscal Year (SFY) 2004 shall be determined at the rate of *[five and twenty-three]* **five and thirty-two** hundredths percent *[(5.23%)]* **(5.32%)** of the hospital's total operating revenue less tax revenue/other government appropriations plus non-operating gains and losses as published by the Missouri Department of Health and Senior Services, Section of Health Statistics. The base financial data for 2000 will be annualized, if necessary, and will be adjusted by the trend factor listed in 13 CSR

70-15.010(3)(B) to determine revenues for the current state fiscal year. The financial data that is submitted by the hospitals to the Missouri Department of Health and Senior Services is required as part of 19 CSR 10-33.030 Reporting Financial Data by Hospitals. If the pertinent information is not available through the Department of Health and Senior Services' hospital database, the Division of Medical Services will use the Medicaid data similarly defined from the Medicaid cost report that is required to be submitted pursuant to 13 CSR 70-15.010(5)(A).

AUTHORITY: sections 208.201, 208.453 and 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed June 7, 2004, effective June 17, 2004, expires Dec. 13, 2004. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register.* If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.450 Furbearers: Hunting Seasons, Methods. The commission proposes to amend provisions of this rule.

PURPOSE: This amendment clarifies the season for prohibition of hunting with the aid of dogs.

Striped skunk, raccoon, opossum, badger, red fox, gray fox and bobcat may be taken in any numbers by hunting from November 15 through February 15. Pelts of furbearers may be possessed, transported, consigned for processing and sold only by the taker from November 15 through March 1, except that bobcats or their pelts shall be delivered by the taker to an agent of the department for registration or tagging before selling, transferring, tanning or mounting, but not later than March 1. Tagged bobcats or their pelts may be possessed and sold throughout the year. It shall be illegal to purchase or sell untagged bobcats or their pelts. Other pelts may be delivered or shipped and consigned by the taker to a licensed taxidermist or tanner before the close of the possession season for pelts. These pelts must be recorded by the taxidermist or tanner and shall not enter the raw fur market. After tanning, pelts may be possessed, bought or sold without permit. Skinned carcasses of legally taken furbearers may be sold by the taker throughout the year. Coyotes may be taken by hunting, and pelts and carcasses may be possessed, transported and sold in any numbers throughout the year; except that coyotes may not be chased, pursued or taken during daylight hours from April 1 through the day prior to the beginning of the prescribed spring turkey hunting season, and may not be chased, pursued or taken through the prescribed spring turkey hunting season, and no furbearers may be chased, pursued or taken during daylight hours with the aid of dogs from November 1 through the prescribed November portion of the firearms deer hunting season, during *[any extended]* **the antlerless-only portion of the** firearms deer hunting season in deer management units open to **deer** hunting or with firearms from a boat at night. The dens or nests of furbearers shall not be molested or destroyed. No person shall accept payment for furbearers taken by another.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Aug. 16, 1972, effective Dec. 31, 1972. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed June 4, 2004.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.186 Waterfowl Hunting. The commission proposes to amend section (4) of this rule.

PURPOSE: This amendment modifies provisions for waterfowl hunting on listed department areas.

(4) Waterfowl may be taken on the department areas listed below only by holders of a valid area *[d]***D**aily **Waterfowl** *[h]***H**unting *[t]***T**ag and only from a blind or in a designated area, except that hunters may retrieve dead birds and pursue and shoot downed cripples outside the designated area. Waterfowl hunters must check out immediately after the close of their hunting trip and prior to processing birds **by accurate completion and return of the Daily Waterfowl Hunting Tag to designated locations**. These department areas are closed to waterfowl hunting on December 25. *[Nonhunters]* **Only authorized persons** are *[prohibited]* **allowed**

within the **waterfowl** shooting areas during the waterfowl hunting season**.** *[unless they are members of and remain with a party authorized to use the area, except that p]***P**ortions of these department areas may be open to fishing during all or part of the waterfowl season.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed May 9, 2002, effective March 1, 2003. Amended: Filed July 31, 2002, effective June 30, 2003. Amended: Filed May 9, 2003, effective Oct 30, 2003. Amended: Filed June 4, 2004.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.130 Fishing, General Provisions and Seasons. The commission proposes to amend section (3).

PURPOSE: This amendment prohibits fishing on St. Charles County (Quail Ridge Park Lake).

(3) Fishing is prohibited on Chillicothe R-2 School District (Litton Center Pond), Jackson County (Fleming Pond)**,** *[and]* Mark Twain National Forest (Carmen Spring Management Area) **and St. Charles County (Quail Ridge Park Lake)**.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed June 4, 2004.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.140 Fishing, Daily and Possession Limits. The commission proposes to amend section (3) and add a new section (15).

PURPOSE: This amendment raises the daily limit on black bass on Lewis County Public Water Supply District #1 (Ewing Lake) and permits only catch-and-release fishing on St. Charles County (Henry's Pond).

(3) The daily and possession limit for black bass is twelve (12) in the aggregate on Cuivre River State Park (Lincoln Lake) **and Lewis County Public Water Supply District #1 (Ewing Lake)**.

(15) On St. Charles County (Henry's Pond), fish must be returned to the water unharmed immediately after being caught.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. Amended: Filed Aug. 30, 2001, effective Jan. 30, 2002. Amended: Filed May 9, 2002, effective Oct. 30, 2002. Amended: Filed July 31, 2002, effective March 1, 2003. Amended: Filed May 9, 2003, effective Oct. 30, 2003. Amended: Filed Aug. 1, 2003, effective Nov. 1, 2003. Amended: Filed Oct. 9, 2003, effective March 30, 2004. Amended: Filed June 4, 2004.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED RULE

3 CSR 10-12.155 Fishing, Stone Mill Spring Branch

PURPOSE: This rule establishes methods, seasons and limits for fishing within Stone Mill Spring Branch, located on U.S. Forest Service land in Pulaski County.

(1) On Stone Mill Spring Branch:

(A) Fishing is permitted on designated waters during posted hours. Not more than one (1) pole and line may be used by one (1) person at any time. Gigging, snaring, snagging, and the taking of live bait are prohibited. Flies, artificial lures, unscented soft plastic baits and natural and scented baits may be used, except in waters posted as restricted to specific baits or lures. The use of any foods to attract fish, except when placed on a hook, is prohibited.

(B) Trout fishing is permitted from March 1 through October 31. The daily limit is four (4) trout, and no person shall continue to fish for any species after having four (4) trout in possession. Fishing in the designated trout waters is permitted only by holders of a valid trout permit.

(C) Trout fishing is permitted from 8:00 a.m. to 4:00 p.m. from November 1 through the last day in February as posted. Fishing in

designated trout waters is permitted only by holders of a valid trout permit. Only flies and artificial lures may be used, and all fish must be returned to the water unharmed immediately after being caught. Fish may not be possessed on these waters.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 4, 2004.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 20—Wildlife Code: Definitions

PROPOSED AMENDMENT

3 CSR 10-20.805 Definitions. The commission proposes to amend sections (38) and (46).

PURPOSE: This amendment changes the definition of nonresident landowner and resident landowner to be consistent with other portions of the Wildlife Code.

(38) Nonresident landowner: Any nonresident of Missouri who is the owner of at least seventy-five (75) acres in one (1) continuous tract in the state of Missouri, or any member of the immediate household whose legal residence and domicile is the same as the nonresident landowner's for at least thirty (30) days last past. *[Corporate ownerships do not apply under this definition.]* **In the case of corporate ownership only registered officers of corporations meet this definition.**

(46) Resident landowner: Any Missouri resident who is the owner of at least five (5) acres in one (1) continuous tract, or any member of the immediate household whose legal residence or domicile is the same as the landowner's for at least thirty (30) days last past. *[Except as provided in 3 CSR 10-7.435, in the case of corporate ownership, this definition shall apply only to those corporate shareholders who reside on lands held by the corporation.]* **In the case of corporate ownership only registered officers of corporations meet this definition.**

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-11.805. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: March 4, 2004. Amended: Filed June 4, 2004.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 40—Office of Athletics
Chapter 2—Licenses and Permits

PROPOSED AMENDMENT

4 CSR 40-2.021 Permits. The office is proposing to amend sections (1) and (3).

PURPOSE: This rule is being amended to bring the regulation of wrestling in Missouri into compliance with national standards.

(1) The promoter shall obtain a separate permit for each contest from the office prior to each contest. The request for the permit must be received by the office no later than *[five (5)]* **ten (10)** business days before the date of a contest. The office will not approve permits for—

(A) Bouts between members of the opposite sex **for professional boxing, professional kickboxing or professional full-contact karate**; or

(3) *[The office may refuse to issue any permit because of the unavailability of an inspector, because the location of the contest is determined by the office to be inadequate or unsafe or for any other reason considered by the office not to be in the best interests of the public, contestants, promoters, officials or the sport of professional boxing, professional wrestling, professional kickboxing, or professional full-contact karate.]* **The office may deny an application for such a permit or grant a limited, restricted or conditional permit for any cause deemed sufficient by the office.**

AUTHORITY: sections 317.006 and 317.011.1, RSMo 2000. Original rule filed April 30, 1982, effective Sept. 11, 1982. Rescinded and readopted: Filed March 2, 1989, effective May 11, 1989. Amended: Filed July 25, 1994, effective Jan. 29, 1995. Rescinded and readopted: Filed Nov. 15, 2001, effective May 30, 2002. Amended: Filed July 1, 2004.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Athletics, PO Box 1335, Jefferson City, MO 65102, by facsimile to (573) 751-5649 or via e-mail at athletic@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 40—Office of Athletics
Chapter 5—Inspector Duties and Rules for Professional Boxing, Professional Wrestling, Professional Kickboxing and Professional Full-Contact Karate

PROPOSED AMENDMENT

4 CSR 40-5.030 Rules for Professional Wrestling. The office is proposing to delete sections (2)–(10); add a new section (2), amend and renumber the previously numbered section (11); add a new section (4); renumber the previously numbered section (12); delete section (13) and add new sections (6)–(22).

PURPOSE: This rule is being amended to bring the regulation of wrestling in Missouri into compliance with national standards.

(2) *[The referee shall score a fall against a contestant when both shoulders are pressed to the mat at the same time for three (3) seconds.]* **A person may not be issued a license to wrestle by the office if s/he is under sixteen (16) years of age. An applicant for a license as a wrestler must be in writing on a form furnished by the office. Any person who gives incorrect information in an application for license as a wrestler may be disciplined by the office.**

(A) A wrestler who is under the age of eighteen (18) years of age, must have a signed notarized affidavit from their legal guardian approving them to participate as a wrestling contestant.

[(3) When any part of a contestant's body is touching the ropes or is outside the ropes or if, in the judgment of the referee, the contestant is no longer able to properly protect him/herself, the referee shall call time and the contestants at once shall release any holds and return to the center of the ring to standing positions and resume the bout.

(4) Should a contestant fall or be pitched or thrown outside the ring, the contestant shall be allowed twenty (20) seconds by the referee to return to the center of the ring to resume the bout. If the contestant fails to do so, s/he shall forfeit the fall. During this time, the opponent shall retire to the far corner of the ring and remain there until signaled by the referee to resume the bout.

(5) Contestants must wear proper athletic attire, approved by the referee. Shoes must be of soft sole and laced with eyelets only.

(6)The use of grease, ointments, strong smelling liniments, drugs, liquids or powders during a bout is prohibited. Contestants shall have their fingernails trimmed closely.

(7) No form of full strangle hold shall be permitted.

(8) No contestant shall take anything into the ring with him/her or pick up anything thrown into the ring to be used in any way to gain an advantage over an opponent.

(9) No wrestling contestant may deliberately lacerate oneself or one's opponent or by other means introduce human blood into the ring. The use of animal blood is prohibited.

(10) Tag team wrestling is a bout between two (2) teams of two (2) wrestlers per team with a maximum of sixty (60)-minute time limit for either one (1) fall or best two (2)-out-of-three (3) falls, with two (2) minutes rest between team falls. Team falls occur only when either contestant from one (1) team has lost a fall. The bout shall commence between one (1) contestant from each opposing team while the contestant's respective partners remain on the apron of the ring outside the ropes and unable to enter the ring unless a contestant's partner is defeated or is able to touch the outside team member's hand. The outside partner must hold a three foot (3') double rope with a knot in one (1) end and the other end looped over the ring post of his/her team's corner. At tag contact between partners, the contestant outside the ropes must have both feet on the apron floor and can reach only over the top rope to make contact. The referee must see to it that the wrestler in the ring, after tagging his/her partner, retires to the outside of the ring as the partner enters the ring. No more than two (2) wrestlers are permitted in the ring at the same time during the bout. When a fall occurs, team partners may relieve each other. If a wrestler is unable to continue, the partner must carry on alone. Time-out must be taken after an injury to permit the injured contestant to be removed from the ring. If neither team has won two (2) falls at the expiration of the time limit, the team having one (1) fall to its credit is to be declared the winner. If no falls are scored, the bout shall be declared a draw. It shall be a foul for a contestant, while waiting his/her turn, to release hold on the corner rope for any reason until officially tagged by his/her partner or called by the referee. After one (1) warning of infractions, the referee shall disqualify the offender. In all other instances the rules governing wrestling contests shall prevail.]

[(11)] **(3)** Any wrestler applying for a license or renewal first must be examined by a physician licensed *[under Chapter 334, RSMo or a physician holding]* **with** the designation of "medical doctor" or "doctor of osteopathy" to establish physical fitness. The office may order the examination of any wrestler at any time to determine whether the wrestler is fit and qualified to engage in further contests. **The professional wrestler must successfully complete an annual physical examination by a physician of the wrestler's choice within thirty (30) days of application for initial licensure and within thirty (30) days of application for license renewal, the office may increase the thirty (30)-day limit under special circumstances approved by the office.**

(4) The office may require a contestant to undergo a drug test. All fees involved with drug tests are the responsibility of the promoter or contestant. A positive reading may result in the suspension or discipline of a license.

[(12)] **(5)** The referee **and/or the office** shall decide all questions arising out of a contest not specifically covered by the statutes and these rules. In all other respects, wrestling shall be subject to the statutes and rules governing this sport.

[(13) The office may require a contestant to undergo a drug test. All fees involved with drug tests are the responsibility of the promoter or contestant. A positive reading may result in the suspension or discipline of a license.]

(6) Wrestlers shall appear at the location of the event at least one (1) hour before the scheduled contest begins.

(7) Wrestler's Equipment.

(A) A wrestler shall be clothed in clean apparel.

(B) A wrestler may wear two (2) pair of trunks, one (1) over the other.

(C) If a wrestler wears shoes, they shall be fitted with soft tops, soft smooth soles, soft laces and equipped with eyelets only.

(D) A wrestler may not have any grease, lotion, or foreign substances on the body.

(8) Contestants shall have their fingernails trimmed closely.

(9) Ring Barrier.

(A) A ring shall be enclosed within a barrier which shall be erected between the ring and the seating area in the arena.

(B) The barrier shall be at least:

1. Six feet (6') away from the ring; and

2. Four feet (4') away from the first row of the seating area.

(C) The ring barrier shall conform to the following requirements:

1. Be constructed of metal or other shatterproof material;

2. Be designed to prevent a wrestler from exiting through the barrier into the seating area during a contest;

3. Be built to a height of at least forty-two inches (42") from the floor of the arena; and

4. Be stable.

(D) The ring barrier shall be approved by the office or the office's representative before its use during a contest.

(10) Time Limits.

(A) A wrestling match shall have a maximum time limit of sixty (60) minutes.

(B) The office may authorize any other time limit.

(11) A timekeeper shall begin the beginning of the time limit of a contest upon the referee's signal and shall sound the bell at the referee's command.

(12) Conduct of Wrestling Contest.

(A) A wrestling contest shall be determined by:

1. One (1) fall; or

2. Two (2) out of three (3) falls.

(13) Scoring a Fall.

(A) A fall is scored by a wrestler when the wrestler's opponent has both shoulders touching the mat for a count of three (3) seconds.

(B) The referee shall signal the wrestler scoring a fall by immediately slapping the mat.

(14) Breaking.

(A) A wrestler:

1. Shall break a hold when instructed by the referee;

2. Failing to break upon instruction by the referee, the offending contestant shall be given a count of ten (10) to release the hold; and

3. Failing to release the hold after the count of ten (10), the offending contestant shall be disqualified and the opponent shall be awarded the match by the referee.

(15) When any part of a contestant's body is touching the ropes or is outside the ropes or if, in the judgment of the referee, the contestant is no longer able to properly protect him/herself, the referee shall call time and the contestants at once shall release any holds and return to the center of the ring to standing positions and resume the bout.

(16) Prohibited Activities.

(A) The following actions are prohibited:

1. Inhibiting breathing by covering the nose and mouth at the same time; and

2. Unsportsmanlike or physically dangerous conduct.

(B) A wrestler continuing to engage in prohibited activities after sufficient warning may be disqualified by the referee.

(17) Refusal or Inability to Continue.

(A) If a wrestler refuses or is physically unable to continue a match, the match shall be ended and the decision awarded to the wrestler's opponent.

(18) Tag Team Wrestling.

(A) "Tag Team Wrestling" means a contest between two (2) teams each composed of two (2) or more wrestlers.

(B) The time limit for this type of contest shall be a maximum of sixty (60) minutes.

(C) A team shall be awarded a fall when a member of the team scores a fall against a member of the opposing team.

(D) A two (2)-minute rest period may be permitted between falls.

(E) A tag team contest shall be conducted as follows:

1. The contest shall begin with one (1) wrestler from each team inside the ring while the respective partners remain outside the ring on the apron;

2. The wrestler(s) outside the ring may not enter the ring unless a fall is scored or his/her partner has tagged his/her hand;

3. In order to be eligible to receive a tag, the wrestler's partner shall be outside the ring on the apron in the proper corner with both feet on the ring apron and only receive the tag over the top ring rope;

4. When the tag is made, the wrestler making the tag shall leave the ring as the partner enters the ring;

5. Only two (2) wrestlers from opposing teams shall be permitted to be in the ring at any one (1) time;

6. After the scoring of a fall a wrestler may relieve the partner;

7. If a wrestler is unable to continue, the wrestler's partner shall continue the contest alone;

8. The referee may call time after an injury to permit the injured wrestler to be removed from the ring; and

9. Release the rope provided in the team corner until officially tagged by the partner.

(19) The referee shall warn a team of any prohibited conduct and may disqualify a team for persisting in prohibited conduct after a warning.

(20) A wrestler may have a second who:

(A) Shall remain in the wrestler's corner outside the ring enclosure; and

(B) The referee may immediately eject from the ring area any second engaging in prohibited activities after sufficient warning.

(21) Referee.

(A) The referee shall have the authority to conduct the contest and enforce the regulations of the office;

(B) The referee's decision on any matter, whether arising under these regulations or not, shall be final; and

(C) Referees assigned to officiate a contest shall:

1. Be properly attired thirty (30) minutes before the scheduled time of the opening contest; and

2. Remain attired and available until all matches have been concluded.

(22) Responsibility of Promoter.

(A) A promoter shall be responsible to the office for the conduct of its representatives and employees, including officials and contestants affiliated with the event.

(B) The promoter shall be responsible for conducting the wrestling contest in a safe, peaceable, and orderly fashion.

(C) Violation of the office's regulations by a representative or employee of the promoter, including officials and contestants affiliated with the event, may be grounds for disciplinary action against the promoter.

AUTHORITY: sections 317.006 and 317.015, RSMo 2000. Original rule filed April 30, 1982, effective Sept. 11, 1982. Rescinded and readopted: Filed March 2, 1989, effective May 11, 1989. Rescinded and readopted: Filed Nov. 15, 2001, effective May 30, 2002. Amended: Filed July 1, 2004.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Athletics, PO Box 1335, Jefferson City, MO 65102, by facsimile to (573) 751-5649 or via e-mail at athletic@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 3—Alcohol and Drug Abuse Programs

PROPOSED AMENDMENT

9 CSR 30-3.201 Substance Abuse Traffic Offender Programs. The department proposes to amend subsection (4)(F).

PURPOSE: The Department of Mental Health wants to codify the required hours for the Clinical Intervention Program. This is the current general practice for the department.

(4) Types of Programs. The department shall recognize and certify the following types of Substance Abuse Traffic Offender Programs:

(F) Clinical Intervention Programs (CIP) which provide intervention, education, and long-term counseling for offenders who are identified through the assessment screening process as having alcohol and/or other substance abuse problems and who are not eligible for traditional residential treatment or traditional intensive outpatient services. A Clinical Intervention Program shall provide fifty (50) hours of therapeutic activity for each offender including **two (2) hours of the Initial Standardized Assessment Protocol, eight (8) hours of individual counseling, twenty (20) hours of group counseling and twenty (20) hours of group education.** *[t]***T**en (10) **of the required fifty (50)** hours *[designed to]* **must specifically** address the issue of drinking and driving; and

AUTHORITY: sections 302.540, 577.049, 577.520, ***RSMo Supp. 2003 and*** *577.001, 577.525, 630.050, 630.053, 630.655 and 631.010, RSMo 2000. This rule was originally filed as 9 CSR 30-3.700. Emergency rule filed April 22, 1983, effective May 2, 1983, expired Aug. 11, 1983. Original rule filed May 13, 1983, effective Sept. 11, 1983. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed June 15, 2004.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Rosie Anderson-Harper, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 3—Alcohol and Drug Abuse Programs

PROPOSED AMENDMENT

9 CSR 30-*[2.]***3.202 SATOP Administration and Service Documentation**. The department proposes to correct the rule number and amend sections (1), (9), and (15).

PURPOSE: This amendment corrects a typographical error in the rule number. The amendment establishes administrative procedures and practices in the operation of Substance Abuse Traffic Offender Programs. The amendment clarifies that if an administrator is also performing QI or QSAP services, they must be certified and not just "meet" the criteria which does not equate to holding the credential. The qualified professional term was changed to qualified substance abuse professional to be consistent with language and definitions in other sections of the department standards. The Safe and Sober Screening Manual was incorporated into the SATOP Manual.

(1) Program Administrator. An administrator shall be identified for the program.

(B) The administrator *[should]* **must** be knowledgeable in the areas of fiscal management, program operation, course-scheduling and court referral procedures.

(C) All administrators making application for program certification must meet the educational and experiential requirements as either a qualified instructor or a qualified **substance abuse** professional and must have attended approved Substance Abuse Traffic Offender Program (SATOP) administrator training. **In the event an administrator is also performing the duties of a Qualified Instructor (QI) or Qualified Substance Abuse Professional (QSAP), certification at the appropriate level is required.**

(9) Assessment Recommendation. The program shall have written policies and procedures which stipulate the methods of individualized assessment and the conditions under which referrals are made for further services. The written policies and procedures must follow the guidelines outlined in the current edition of the *[Safe and Sober Screening] **SATOP** Manual* and incorporated herein by reference. The written policies and procedures shall address the client's right to a second opinion and procedures for judicial review, if necessary.

(15) Content of Client Records. Each client record shall include:

(F) Documentation of an individualized assessment screening, where required. The documentation shall include the name of the qualified **substance abuse** professional, date, amount of time spent, summary of the screening instrument results which includes a substance use history, summary of findings, recommendation and student's response to the recommendation;

AUTHORITY: sections 302.304, 302.540, 577.049, and 577.520, ***RSMo Supp. 2003 and*** *577.001, 577.525, 630.050, 630.053, 630.655 and 631.010, RSMo 2000. This rule was originally filed as 9 CSR 30-3.730. Original rule filed Nov. 2, 1987, effective May 15, 1988. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed June 15, 2004.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Rosie Anderson-Harper, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 3—Alcohol and Drug Abuse Programs

PROPOSED AMENDMENT

9 CSR 30-3.204 SATOP Personnel. The department proposes to amend section (1), to remove section (6), and to remove the forms which follow the rule in the *Code of State Regulations*.

PURPOSE: The purpose of this amendment is to provide clarification regarding the definitions for persons seeking Qualified Substance Abuse Professional and Qualified Instructor status. It was unclear to applicants if the three (3) additional criteria for a Qualified Instructor related to the applicant with the bachelor's degree, the Registered Alcohol and Substance Abuse Counselor II or both. This amendment removes reference to and actual copy of the Form number MO 650-2934.

(1) Qualifications of Staff. The program shall have qualified staff.

(C) A qualified instructor is a graduate of an accredited college or university with a bachelor's degree in counseling, criminal justice, education, psychology, social work or closely related field *[or a person designated as a Registered Alcohol and Substance Abuse Counselor (RASACII) by the Missouri Substance Abuse Counselors Certification Board, Inc.]* who is knowledgeable about substance abuse, as evidenced by *[either]*—

1. Nine (9) semester hours directly related to substance abuse; **or**

2. One hundred forty-four (144) contact hours of continuing education directly related to substance abuse; or

3. One (1) year of full-time paid employment experience in the prevention, treatment or rehabilitation of substance abuse. Applicability of full-time experience shall be defined in the SATOP *Personnel Training and Certification Information Guide*.

(D) A person designated as a Registered Alcohol and Substance Abuse Counselor II (RASAC II) by the Missouri Substance Abuse Counselors' Certification Board, Inc. may be granted qualified instructor status.

[(D)] **(E)** Staff who conduct education and assessment must—

1. Not have had a suspension or revocation of their drivers' licenses within the preceding two (2) years;

2. Not have received a citation or have been charged with any state or municipal alcohol- or drug-related offense within the preceding two (2) years, except when found not guilty in a court of competent jurisdiction;

3. Not have allowed the use of alcohol or other drugs to interfere with the conduct of their SATOP duties;

4. Successfully complete SATOP training offered or approved by the division;

5. Meet criminal record review requirements specified in 9 CSR 10-5.190; and

6. Be certified by the division prior to their employment as meeting requirements as a qualified instructor or qualified substance abuse professional.

[(6) Form number MO 650-2934 is included herein.]

AUTHORITY: sections 302.540, 577.049, 577.520, ***RSMo Supp. 2003 and*** *577.001, 577.525, 630.050, 630.053, 630.655 and 631.010, RSMo 2000. This rule originally filed as 9 CSR 30-3.750. Original rule filed Nov. 2, 1987, effective May 15, 1988. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed June 15, 2004.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Rosie Anderson-Harper, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 3—Alcohol and Drug Abuse Programs

PROPOSED AMENDMENT

9 CSR 30-3.206 SATOP Program Structure. The department proposes to amend existing sections (9), (10), (11), (15), (16) and (20); to add a new section (10) and to renumber the remaining sections accordingly; and to remove section (32) and the forms which follow the rule in the *Code of State Regulations*.

PURPOSE: This rule establishes basic requirements and structure for Substance Abuse Traffic Offender Programs including the assessment and referral process. The first change clarifies and reduces the requirements for comparable programs. The Department of Mental Health does not want programs charging consumers "administrative fees" that are not standardized. This amendment will allow standardized fees, uses more professional language, and will allow the department the ability to enforce requirements for audiovisual equipment. This amendment deletes the reference to and the actual forms entitled A-3, B-3 and C-2 as the department no longer uses paper forms.

(9) Criteria for *[Successful Completion of Treatment.]* **Comparable Programs for Persons Domiciled in Missouri. Persons domiciled in Missouri must complete a Missouri SATOP or Missouri comparable program.** When the assessment screening process indicates and if the person is eligible, **a** certified **or recognized accredited** alcohol and drug treatment and rehabilitation program*[s]* may *[also]* provide services for *[prior and persistent]* offenders. *[In addition, such persons, including first offenders complete certified rehabilitation programs after being charged or adjudicated for their DWI offense but prior to their Offender Management Unit (OMU) screening process, may substitute participation in these rehabilitation programs under certain conditions.]* In order to be recognized by SATOP as *[successfully completing treatment]* **minimally complying with SATOP requirements**, the offender must have written verification from a certified **or recognized accredited** treatment and rehabilitation program that he or she has *[–]* **participated in and successfully completed a minimum of one hundred twenty (120) hours of treatment during a period of no less than thirty (30) calendar days. Documentation of completion of a comparable program must be documented by the provider of treatment services on the department approved form. Services shall include the following:**

[(A) Participated as scheduled in treatment services on a residential and/or outpatient basis for a period of at least ninety (90) calendar days;

(B) Substantially achieved personal recovery goals;

(C) Met any other program requirements for successful completion of treatment. Those persons presenting substance dependence with a history of multiple offenses must participate in one hundred sixty (160) hours of services during the treatment episode.]

(A) A minimum of forty (40) hours of individual and/or group counseling; and

(B) The remaining hours must include any combination of the following: driver related education, individual counseling, group education, group counseling, and family therapy.

[(D)] **(C)** Individuals who complete approved programs at recognized treatment and rehabilitation programs may present documentation of such completion to an OMU. A subsequent SATOP screening is not required. The OMU will complete the Notice of Offender Assignment, Notice of Offender Compliance and SATOP Completion Certificate for those individuals. A supplemental fee must be collected for these individuals.

[(E)] **(D)** Individuals who complete approved programs outside of the state of Missouri may submit a SATOP Comparable Program Completion Form to the Department of Mental Health. Upon approval of the program, notification will be provided to the Department of Revenue that the program has met SATOP requirements for license reinstatement.

(10) Criteria for Comparable Programs for Persons Domiciled Outside of Missouri. When the assessment screening process indicates and if the person is eligible, a certified or recognized accredited alcohol and drug treatment and rehabilitation program may provide services for offenders. In order to be recognized by SATOP as minimally complying with SATOP requirements, the offender must have written verification from a certified or recognized accredited program that an assessment was conducted and the offender participated in and successfully completed the recommended level of service that would satisfy the requirements of that state or jurisdiction for a person convicted of a substance abuse traffic offense in that state or jurisdiction.

[(10)] **(11)** Cost of Treatment. The client**, including those participating in comparable programs,** shall be responsible for all costs related to the completion of the treatment and rehabilitation programs referenced in or required by this rule.

(A) All clients shall be required to pay an initial base amount determined by the department before applying the department's Standard Means Test in accordance with 9 CSR 10-1.016.

(B) The client shall be responsible for all costs related to treatment which are not reimbursed through a third-party payer or the department's Standards Means Test process.

(C) Programs may develop long-term payment plans to reasonably assist the client in paying off any outstanding balances.

[(11)] **(12)** Cost of SATOP. The cost for SATOP program shall be determined and approved by the department and shall be paid by the client and shall cover the cost of the program. **Programs may not charge clients fees which are not specifically outlined in the agreement or contract with the department unless prior authorization is granted.**

[(12)] **(13)** Hours of Participation. The OEP/ADEP program shall provide at least ten (10) hours of education. The WIP program shall provide at least twenty (20) hours of education and intervention services.

[(13)] **(14)** Curriculum Guides. The OEP program shall be conducted in accordance with the current edition of the *OEP Missouri Curriculum Guide*. The ADEP program shall be conducted in accordance with the current edition of the *ADEP Missouri Curriculum Guide*. The WIP program shall be conducted in accordance with the current edition of the *WIP Missouri Curriculum Guide*. A program must specifically request and obtain approval from the division before deviating in any manner from the content and methods in the applicable *Missouri Curriculum Guide* as incorporated herein by reference.

[(14)] **(15)** Meals and Breaks. Ample time shall be provided for breaks and meals, where appropriate.

(A) No class shall continue for more than two (2) hours without a break.

(B) The time for breaks shall not be counted toward the required hours of education.

(C) Break time should not exceed more than five (5) minutes per classroom hour of education.

(D) Break time should not be used at the beginning or the end of the classroom session.

[(15)] **(16)** Length of Educational Sessions. The OEP/ADEP education component shall be conducted in at least two (2) calendar days.

(A) No OEP/ADEP session shall last more than six (6) hours, not *[counting]* **including** breaks.

(B) No session may begin before 8:00 a.m. or end after 11:00 p.m.

[(16)] **(17)** Use of Instructional Aids. Instructional aids shall be utilized.

(A) Aids may include, but are not limited to, films, videotapes, worksheets and informational handouts.

(B) Films and videotapes shall not comprise more than twenty percent (20%) of the educational component. Audiovisual instructional aids *[should]* **must**—

1. Produce a clear image when projected on a clear surface;
2. Utilize a television monitor at least twenty-five inches (25") in diameter;
3. Utilize high quality videotapes or films; and
4. Allow all participants to have an unobstructed view.

[(17)] **(18)** Guest Speakers. Use of guest speakers shall not comprise more than twenty percent (20%) of the educational component.

[(18)] **(19)** Maximum Number of Persons in Educational Sessions. Program size shall provide an opportunity for client participation.

(A) It shall be usual and customary practice for each OEP/ADEP educational session to have no more than thirty (30) clients in order to promote discussion and participation.

(B) Parents, guardians or significant others who may attend a session or part of a session are not included in the figure of thirty (30) clients.

[(19)] **(20)** Criteria for Successful Completion of SATOP Programs. Successful completion requires that the client shall—

(A) Be free of the influence of mood-altering substances at every session;

(B) Attend all sessions on time;

(C) Attend sessions in their proper sequence unless the instructor approves an alternate sequence;

(D) Complete all assignments and cooperatively participate in all class activities;

(E) Pay all fees; and

(F) Complete and sign all required forms.

[(20)] **(21)** WIP Requirements. In addition to the basic requirements for OEP/ADEP programs, WIP programs shall—

(A) Be conducted in accordance with the applicable *Missouri Curriculum Guide* for WIP;

(B) Be conducted in a supervised environment approved by the division during a forty-eight (48)-hour weekend;

(C) Provide a minimum of twenty (20) hours of education and intervention;

(D) Provide meals and appropriate sleeping arrangements.

1. Sleeping arrangements should not exceed four (4) persons per room. Waivers for sleeping arrangements may be granted in some instances for programs operated through correctional or detention facilities;

2. Agencies must provide documentation that individuals preparing or handling meals for the Weekend Intervention Program meet state, county, or city regulations related to the handling of food;

(E) Conduct small group breakout discussion and intervention sessions which shall be facilitated by at least one (1) qualified **substance abuse** professional per twelve (12) clients. In the event two (2) professional staff co-facilitate a small group, one (1) of the staff may be a qualified instructor or an associate counselor if the group size does not exceed twenty-four (24) clients;

(F) Not exceed thirty (30) clients per staff member in large group education lectures and films;

(G) Conduct a medical screening on each participant using the DMH 8618 Non-Emergency Medical Evaluation Checklist; and

(H) Complete a comprehensive assessment on each participant including a legal, social, occupational, physical, psychological, financial, and alcohol/drug problem assessment.

[(21)] **(22)** WIP Drug Testing. WIP programs may use breath or urine testing when alcohol or other drug usage is suspected, but cannot otherwise be verified, during the course of the WIP weekend. A written report of the incident shall be made by the WIP staff and reviewed by the WIP program director who will make the final decision as to the client suitability for continuation in the program. Random breath or urine testing shall not be used.

[(22)] **(23)** WIP Cost. The cost of the WIP program may be partially offset for some clients by the department, provided funds are available and the person is in need of assistance by meeting the eligibility criteria based on the department's Standard Means Test. These offenders shall be required to pay the basic cost of SATOP in addition to any partial offset towards the cost of the WIP program.

[(23)] **(24)** Review and Approval of Costs. The cost for all SATOP programs approved by the department shall be periodically reviewed and adjusted, if necessary, based on the best interests of clients, society and the programs.

[(24)] **(25)** Certification of SATOP Training Programs. The department shall certify regional training programs. A certified training program must:

(A) Provide all of the basic core functions of SATOP;

(B) Develop an individualized training plan for each person in training;

(C) Assign a trainer to each person in training;

(D) Provide the opportunity for direct program observation of each program activity by each person in training; and

(E) Maintain full compliance with certification standards.

[(25)] **(26)** Training Content. Training shall include, but not be limited to, the following:

(A) Review of certification standards;

(B) Basic agency management;

(C) Characteristics of DWI offenders;

(D) Assessment procedures including the individualized interview and use of the screening instruments;

(E) The principles and techniques of classroom management;

(F) The principles and techniques of adult learning;

(G) Orientation to the appropriate curriculum guide;

(H) Review of the referral process and treatment resources;

(I) SATOP personnel requirements; and

(J) Professional ethics.

[(26)] **(27)** Program Observation Required. Training shall include direct observation of a program conducted by a qualified trainer at a certified training program. The term qualified trainer is used to describe a qualified substance abuse professional who has experience in providing two hundred forty (240) hours of ADEP, OEP or WIP.

[(27)] **(28)** Written Examination. Certified staff shall complete a written examination and demonstrate the knowledge necessary to conduct the Alcohol and Drug Education Program (ADEP) or the appropriate Substance Abuse Traffic Offender Program (SATOP).

[(28)] **(29)** Cost of Training. The cost of training shall be determined and approved by the department. For each trainee who successfully completes the applicable training requirements, including payment of training cost, the training program shall notify the department within ten (10) days of the successful completion.

[(29)] **(30)** Availability of Training. Training must be accessible to all trainees on a regular and ongoing basis. The training program shall have the capability to admit each applicant within thirty (30) days after the applicant's initial request for training.

[(30)] **(31)** Termination of a Training Program. The training program or the department may terminate the training program by giving ninety (90) days written notice to the other party.

[(31)] **(32)** Compliance. Failure to adhere to the stipulations, conditions, and requirements set forth in this rule shall be considered cause for revocation or denial of program certification.

[(32) The following forms are included herein:
(A) MO 650-7743;
(B) MO 650-7744; and
(C) MO 650-7745.]

AUTHORITY: sections 302.540, 577.049, 577.520, ***RSMo Supp. 2003 and*** *577.001, 577.525, 630.050, 630.053, 630.655 and 631.010, RSMo 2000. This rule originally filed as 9 CSR 30-3.760. Original rule filed Nov. 2, 1987, effective May 15, 1988. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed June 15, 2004.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Rosie Anderson-Harper, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 9—DEPARTMENT OF MENTAL HEALTH
Division 30—Certification Standards
Chapter 3—Alcohol and Drug Abuse Programs

PROPOSED AMENDMENT

9 CSR 30-3.208 SATOP Supplemental Fee. The department proposes to amend section (1), to remove section (7), and to remove the forms which follow the rule in the *Code of State Regulations*.

PURPOSE: This amendment is necessary to make the rule consistent with newly signed legislation ensuring that the appropriate supplemental fee is collected. The addition of the words "per offense" clarifies that the supplemental fee is charged per Driving-While-Intoxicated (DWI) offense, not once in a lifetime as it reads without the added language. This amendment removes reference to a paper

form no longer in use. SATOP has transferred to an electronic forms system for providers.

(1) Supplemental Fee. All Substance Abuse Traffic Offenders Programs shall collect from all applicants entering the program a supplemental fee **determined by the department** which shall be in addition to any other costs which may be charged by the program. The supplemental fee shall be collected no more than one (1) time **per offense** from any individual who has entered SATOP, whether for assessment or *[for an]* educational program.

[(7) Form number MO 650-1017 is included herein.]

AUTHORITY: sections 302.540, 577.049, 577.520, ***RSMo Supp. 2003 and*** *577.001, 577.525, 630.050, 630.053, 630.655 and 631.010, RSMo 2000. This rule was originally filed as 9 CSR 30-3.790. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed April 29, 1998, effective Oct. 30, 1998. Moved to 9 CSR 30-3.208 and amended: Filed Feb. 28, 2001, effective Oct. 30, 2001. Amended: Filed July 29, 2003, effective March 30, 2004. Amended: Filed June 15, 2004.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by writing to Rosie Anderson-Harper, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 5—Elevators

PROPOSED AMENDMENT

11 CSR 40-5.065 Missouri Minimum Safety Codes for Existing Elevator Equipment. The Division of Fire Safety is amending paragraphs (1)(H)2., (1)(S)1. and adding new paragraphs (1)(I)8., and new subsections (1)(U) and (V), and deleting paragraph (1)(O)4.

PURPOSE: This amendment relates to public safety issues by requiring additional safety measures to be enforced during the annual inspection relating to existing equipment. The amendment also clarifies applicability of nationally recognized standards.

(1) In a political subdivision or municipality that had adopted an edition of ASME A17.1 code, annual safety inspection and tests shall be performed to the code adopted and enforced at the time the elevator equipment was installed. The following standards apply to all existing elevator equipment installed prior to July 1, 1999 as provided in 11 CSR 40-5.060. Any installation which is in compliance with the latest ASME A17.1 version adopted and amended by the Elevator Safety Board, unless as exempted by 701.359, RSMo shall be considered to be in compliance with 11 CSR 40-5.065.

(H) Machine Rooms.

1. All means of access to elevator machine rooms shall be of a permanent nature and shall be constructed and maintained in a clear and unobstructed manner.

2. The elevator machine and control equipment shall be located in a separate room or separated space designed as an elevator machine room or space and shall be accessible only to authorized personnel. Existing machines and equipment essential to the operation and purpose of the building are permitted but must not interfere with the safety and work area for maintaining elevator equipment. **Pipes conveying liquid, gas, or vapor that cross overhead of elevator equipment or come in close proximity of the equipment shall be guarded or guttered.** Where other existing machines and equipment essential to the operation and purpose of the building are located in the machine room or space, the elevator related equipment and machines shall be separated by a substantial grill constructed of noncombustible material not less than six feet (6') high and the grill shall be of a design that will reject a ball two inches (2") in diameter. All rooms or enclosures shall have a self-closing and self-locking door and shall be operable from the interior space without use of a key. After the effective date of this rule, no equipment shall be added to the machine room or space that is not used in connection with the operation of the elevator.

3. All elevator machine rooms shall be provided with a floor. The floor shall cover the entire area of the machine room and hoistway.

4. Machine room floors shall be kept clean and free of grease and oil. Articles or materials not necessary for the maintenance or operation of the elevator shall not be stored therein. Flammable liquids having a flash point of less than one hundred ten degrees Fahrenheit (110°F) shall not be stored in the machine room.

5. Lighting in the machine room shall be not less than ten (10) foot-candles at floor level.

6. Where there is more than one machine in a room, each machine shall have a different number conspicuously marked on it. The controller, disconnect switch and relay panels for each machine shall be conspicuously numbered to correspond to the machine it controls.

7. All electrical equipment in the machine room shall be grounded which shall conform to ASME A17.1, 1996 edition and NFPA, 70, *National Electric Code*.

8. All electrical wiring in the machine room shall be enclosed in metal conduit, flexible conduit or metal raceways or be in compliance with NFPA 70, *National Electric Code*.

9. Each elevator having polyphase alternating current power supply shall be provided with means to prevent the starting of the elevator motor if:

A. The phase rotation is in the wrong direction; or

B. There is a failure of any phase. This protection shall be considered provided in the case generator-field control having alternating current motor-generator driving motors, provided a reversal of phase will not cause the elevator driving-machine motor to operate in the wrong direction. Controllers whose switches are operated by polyphase torque motors provide inherent protection against phase reversal or failure.

(I) Pits.

1. All pits shall be kept dry, clean and free of equipment or material not relating to the operation of the elevator. Exception: Sump pumps.

2. Buffers (spring or oil type) under cars and counterweights shall be permanently fastened to the floor or their supporting beams.

3. All elevators shall have counterweight guards. Guards shall be of unperforated metal of at least the strength of or braced to the equivalent strength of number fourteen (14) gauge sheet steel. Guards shall extend from a point not more than twelve inches (12") above the pit floor to a point not less than seven feet (7') above the pit floor. Where guards are not feasible, warning chains shall be installed on the bottom of the counterweights and shall extend no less than five feet (5') below counterweight. Chains shall be of a number ten (10) U.S. gauge wire or of equal size. Exception: When compensating chains or ropes are used, a counterweight guard is not required.

4. Buffers shall be installed where elevator pits are not provided with buffers and where the pit depth will permit, buffers shall comply with ASME A17.1, 1955 edition, section 201.

5. Where the depth of any pit is four feet (4') or more it shall have a ladder permanently installed. The ladder shall extend not less than thirty inches (30") above the sill of the access door, or hand grips shall be provided to the same height. Ladder shall be of noncombustible material.

6. A permanent lighting fixture shall be provide in all pits to provide an illumination of not less than five (5) foot-candles at the pit floor. The fixture switch shall be provided and accessible from the pit access door.

7. An enclosed stop switch meeting the requirements of ASME A17.1, 1995 edition, rule 210.2(e) shall be installed in the pit of all power elevators and be accessible from the pit access door.

8. Pit sump holes, with or without pumps, and well holes that are accessible, shall be covered flush with the pit floor. The covering shall consist of a noncombustible material.

(O) Existing Hydraulic Elevators.

1. Cylinders of hydraulic-elevator machines shall be provided with a means for releasing air or other gas.

2. Each pump or group of pumps shall be equipped with a relief valve conforming to the following requirements:

A. Type and location. The relief valve shall be located between the pump and the check valve and shall be of such a type and so installed in the bypass connection that the valve cannot be shut off from the hydraulic system;

B. Setting. The relief valve shall be preset to open at a pressure not greater than that necessary to maintain one hundred and twenty-five percent (125%) of working pressure;

C. Size. The size of the relief valve and bypass shall be sufficient to pass the maximum rated capacity of the pump without raising the pressure more than twenty percent (20%) above that at which the valve opens. Two (2) or more relief valves may be used to obtain the required capacity; and

D. Sealing. Relief valves having exposed pressure adjustments if used, shall have their means of adjustment sealed after being set to the correct pressure. Exception: No relief valve is required for centrifugal pumps driven by induction motors, provided the shut-off, or maximum pressure which the pump can develop, is not greater than one hundred and thirty-five percent (135%) of the working pressure at the pump.

3. Storage and discharge tanks shall be covered and suitably vented to the atmosphere.

[4. Hydraulic elevators shall be governed by the rules contained in ASME A17.1, 1955 edition, Part III.]

[5.] **4**. All repair and alterations of hydraulic elevators shall comply with ASME A17.1, 1996 edition, section 1201 with supplements thereto.

(S) Fire Service.

1. Elevators with fire service features shall comply with the edition of ASME A17.1 that *[was in print at the time of installation]* **the elevator was constructed to meet**.

(U) Existing Vertical and Inclined Platform Lifts.

1. Existing vertical and inclined platform lifts shall meet the requirements of ASME A17.1, 1984 edition, Part 20.

(V) Existing Manlifts.

1. Existing manlifts shall be inspected per the requirements of ASME A90.1, 1997 edition.

AUTHORITY: section 701.355, RSMo 2000. Original rule filed Aug. 26, 1998, effective July 1, 1999. Amended: Filed Aug. 17, 2000, effective Feb. 28, 2001. Emergency amendment filed April 30, 2001, effective May 10, 2001, expired Nov. 5, 2001. Amended: Filed April 30, 2001, effective Oct. 30, 2001. Amended: Filed Dec. 16, 2002, effective June 30, 2003. Amended: Filed June 14, 2004.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions one thousand eight hundred seventy-five dollars ($1,875) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities eighteen thousand seven hundred fifty dollars ($18,750) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Division of Fire Safety, William Farr, State Fire Marshal, PO Box 844, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	11CSR40-5.065 Missouri Minimum Safety Codes for Existing Elevator Equipme
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
State of Missouri	$1,875
City & County Governmental entities	$1,875

III. WORKSHEET

It is estimated that there are approximately 25,000 elevators located in Missouri. Approximately 1% (250) of these elevators will be required to comply with the proposed rule amendment. The cost per unit to comply is estimated to be approximately $75.00.
Approximately (25) elevators are believed to be owned by State of Missouri.
Approximately (25) elevators are believed to be owned by city/county governmental entities.

25 x $75.00 = $1,875

IV. ASSUMPTIONS

Based upon historical data relating to variances being requested from the Elevator Safety Board, the Division estimates approximately 250 elevators will be required to comply with proposed rule amendment.

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	11CSR40-5.065 Missouri Minimum Safety Code for Existing Elevator Equipment
Type of Rulemaking:	Proposed Rule Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
250	Building owners	$18,750

II. WORKSHEET

It is estimate that there are approximately 25,000 elevators located within Missouri. Approximately 1% (250) of these elevators shall be required to comply with the proposed rule amendment. The cost to comply per unit is estimated to be approximately $75.00.

250 x $75.00 = $18,750

IV. ASSUMPTIONS

Based upon variance requests submitted to the Elevator Safety Board in relation to pit issues, it is believed that approximately 1% of the 25,000 elevators estimated to be in Missouri will be required to comply with this proposed amendment.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 5—Elevators

PROPOSED AMENDMENT

11 CSR 40-5.090 Inspection and Testing. The Division of Fire Safety is amending section (1).

PURPOSE: This amendment clarifies requirements of an annual safety inspection.

(1) Minimum Standard. All inspections and testing required by Missouri Statute 701.350–701.380 and these rules and regulations shall be made in accordance with the standards established by these rules and regulations and the American Society of Mechanical Engineers Manuals for Elevators and Escalators, ASME A17.1, *[A17.2,]* A17.2.1, A17.2.2, A18.1 and A17.2.3, latest version adopted and amended by the Elevator Safety Board excluding routine inspection requirements of part 10 in ASME A17.1 **pertaining to the six (6) month inspection only**. The foregoing standards are incorporated by reference in this rule.

AUTHORITY: section 701.355, RSMo [1994] 2000. Original rule filed Aug. 26, 1998, effective July 1, 1999. Amended: Filed Aug. 17, 2000, effective Feb. 28, 2001. Amended: June 14, 2004.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Division of Fire Safety, William Farr, State Fire Marshal, PO Box 844, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Drivers License Bureau Rules

PROPOSED AMENDMENT

12 CSR 10-24.440 Motor Voter *Registration* Application Form. The director proposes to amend the title and delete the form following this rule in the *Code of State Regulations*.

PURPOSE: This amendment clarifies the title and incorporates the motor voter application form as referenced in section (1) of this rule.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) The *[attached form is an]* application for applying for voter registration **is incorporated by reference**.

AUTHORITY: section 115.160, RSMo Supp. [1998] 2003. Original rule filed Dec. 22, 1994, effective June 30, 1995. Amended: Filed April 5, 1999, effective Sept. 30, 1999. Amended: Filed June 3, 2004.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

PROPOSED AMENDMENT

13 CSR 40-2.375 Medical Assistance for Families. The director is amending section (1).

PURPOSE: This amendment modifies the income limit for the Medical Assistance for Families program after June 30, 2004.

(1) The income limit for persons to be eligible for the Medical Assistance for Families program established pursuant to section 208.145, RSMo is at or below *[seventy-seven percent (77%)]* **seventy-five percent (75%)** of the federal poverty level for the household size.

AUTHORITY: sections 207.020 and 208.145, RSMo 2000. Emergency rule filed June 7, 2002, effective July 1, 2002, expired Dec. 27, 2002. Original rule filed June 11, 2002, effective Dec 30, 2002. Emergency amendment filed June 7, 2004, effective July 1, 2004, expires Dec. 27, 2004. Amended: Filed June 7, 2004.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions nine hundred fifty-three dollars and eighty-six cents ($953.86) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Family Support Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

RULE NUMBER

Rule Number and Name: 13 CSR 40-2.375

Type of Rulemaking: Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Division of Family Services	**$953.86**

WORKSHEET

1,289 times two equals 2,578 letters times $0.37 postage per letter equals $953.86 postage cost.

IV. ASSUMPTIONS

Approximately 1,289 families will be sent two letters notifying the affected clients. The cost will be $0.37 cents per letter. Administrative costs are matched by the federal government at 50%. Therefore half, or $476.93 would be general revenue cost and the other half $476.93 would be federal Medicaid cost.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program

PROPOSED AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is changing section (11).

PURPOSE: The proposed amendment changes section (11). This amendment will establish the Federal Reimbursement Allowance (FRA) assessment for SFY 2004 at five and thirty-two hundredths percent (5.32%).

(11) Federal Reimbursement Allowance (FRA) for State Fiscal Year 2004. The FRA assessment for State Fiscal Year (SFY) 2004 shall be determined at the rate of *[five and twenty-three]* **five and thirty-two** hundredths percent *[(5.23%)]* **(5.32%)** of the hospital's total operating revenue less tax revenue/other government appropriations plus non-operating gains and losses as published by the Missouri Department of Health and Senior Services, Section of Health Statistics. The base financial data for 2000 will be annualized, if necessary, and will be adjusted by the trend factor listed in 13 CSR 70-15.010(3)(B) to determine revenues for the current state fiscal year. The financial data that is submitted by the hospitals to the Missouri Department of Health and Senior Services is required as part of 19 CSR 10-33.030 Reporting Financial Data by Hospitals. If the pertinent information is not available through the Department of Health and Senior Services' hospital database, the Division of Medical Services will use the Medicaid data similarly defined from the Medicaid cost report that is required to be submitted pursuant to 13 CSR 70-15.010(5)(A).

AUTHORITY: sections 208.201, 208.453 and 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed June 7, 2004, effective June 17, 2004, expires Dec. 13, 2004. Amended: Filed June 7, 2004.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate in SFY 2004.

PRIVATE COST: This proposed amendment is expected to cost private entities an additional $8,342,452 in SFY 2004.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	**Classification by types of the business entities which would likely be affected:**	**Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:**
130	Hospitals	SFY 2004 - $8,342,452

III. WORKSHEET

The fiscal note is based on establishing the SFY 2004 FRA assessment percentage at 5.32%.

IV. ASSUMPTIONS

The SFY 2004 FRA assessment is based on total operating revenue less tax revenue/other government appropriations plus non-operating gains and losses of approximately $10.4 billion multiplied by 5.32%. The $8,342,452 cost is the difference between the original SFY 2004 estimate of $544,753,070 and the new SFY 2004 estimated cost of $553,095,522. The 130 hospitals reported above include 37 hospitals that are owned or controlled by state, county, city or hospital districts. The impact on these hospitals is $1,154,672 ($68,254,064 new estimate less $67,099,392 original estimate).

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits: Seasons, Methods, Limits

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-10.725 is amended.

This amendment establishes fishing seasons and limits and is excepted by section 536.021, RSMo from the requirement for filing as a proposed amendment.

The Department of Conservation amended 3 CSR 10-10.725 by establishing seasons and limits for the harvest of shovelnose sturgeon on a portion of the Missouri River.

3 CSR 10-10.725 Commercial Fishing: Seasons, Methods

PURPOSE: *This amendment changes the last day of the closed season on the commercial harvest of shovelnose sturgeon on a portion of the Missouri River.*

(4) From May 16 through October 31 on the Missouri River downstream from U.S. Highway 169 to Carl R. Noren Access and downstream from Chamois Access to its confluence with the Mississippi River or banks thereof, game fish (including channel, blue and flathead catfish, paddlefish and shovelnose sturgeon) may not be possessed or transported while fishing by commercial methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught.

SUMMARY OF PUBLIC COMMENT: Seasons and limits are excepted from the requirement of filing as a proposed amendment under section 536.021, RSMo.

This amendment filed June 4, 2004, effective **June 15, 2004**.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-36.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 2, 2004 (29 MoReg 197). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this and associated proposed rules was held March 12, 2004, and the public comment period ended March 5, 2004. At the public hearing, Nathan Williams, Senior Counsel in General Counsel's Office of the Public Service Commission of Missouri, and Natelle Dietrich, Regulatory Economist III of the Public Service Commission of Missouri provided oral responses to written comments. In addition, orally at the public hearing, Mike Dandino provided comments for the Office of the Public Counsel; Mimi McDonald, Senior Counsel for Southwestern Bell Telephone, LP, provided comments for Southwestern Bell Telephone, LP; Carl Lumley of Curtis, Oetting, Heinz, Garrett & O'Keefe, PC, provided comments for MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc.; Larry Dority of Fisher and Dority, PC, provided comments for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; and Lisa Chase of Andereck, Evans, Milne, Peace and Johnson, LLP, provided comments for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company.

The staff of the Public Service Commission of Missouri, Southwestern Bell Telephone, LP, Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. and Sprint filed written comments.

COMMENT: Sprint suggests revising section (7) of the rule to append the language "or any other date as mutually agreed upon by both parties in writing" to that section.

RESPONSE: The definition of "request for negotiation" of section (7) is tied to proposed rule 4 CSR 240-36.040(2) which states the dates within which a petition for arbitration may be filed with the commission. The dates found in 4 CSR 240-36.040(2) are established by section 252(b)(1) of the Telecommunications Act of 1996. The parties may seek a waiver of the rule. No changes have been made to the rule as a result of this comment.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. propose to revise section (5) to "Arbitration means the submission of a dispute to the commission for resolution with the assistance of a third party neutral" because the commission will make the final decision. They propose modifying section (6) to specify that the relief sought is under section 252 of the Act, not just the Act. They propose that, for consistency with other proposed rules, section (8) be modified to: "Arbitrated agreement means the entire agreement filed by the parties in conformity with the arbitrator's report as approved or modified by the commission."
RESPONSE AND EXPLANATION OF CHANGE: Revision of sections (5) and (8) is warranted to clarify that it is the commission that ultimately makes the decision, not the arbitrator. Further, because it is the purpose of this and the accompanying proposed Chapter 36 rules to implement the provisions of section 252 of the Telecommunications Act of 1996, the proposal to modify section (6) to specify section 252 of the Act should be adopted. Sections (5), (6) and (8) of the rule will be changed.

4 CSR 240-36.010 Definitions

(5) Arbitration means the submission of a dispute to the commission for resolution by a process that will employ a neutral arbitrator who will facilitate resolution of the disputed issues through markup conferences and limited evidentiary hearings, and who will prepare a final report for acceptance, modification or rejection by the commission.

(6) Petition means an application to the commission for relief under section 252 of the Act.

(8) Arbitrated agreement means the entire agreement filed by the parties in conformity with the commission's order approving, rejecting or modifying the arbitrator's final report, in whole or in part.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-36.020 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 2, 2004 (29 MoReg 197–198). The section with changes is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this and associated proposed rules was held March 12, 2004, and the public comment period ended March 5, 2004. At the public hearing, Nathan Williams, Senior Counsel in General Counsel's Office of the Public Service Commission of Missouri, and Natelle Dietrich, Regulatory Economist III of the Public Service Commission of Missouri provided oral responses to written comments. In addition, orally at the public hearing, Mike Dandino provided comments for the Office of the Public Counsel; Mimi McDonald, Senior Counsel for Southwestern Bell Telephone, LP, provided comments for Southwestern Bell Telephone, LP; Carl Lumley of Curtis, Oetting, Heinz, Garrett & O'Keefe, PC, provided comments for MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc.; Larry Dority of Fisher and Dority, PC, provided comments for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; and Lisa Chase of Andereck, Evans, Milne, Peace and Johnson, LLP, provided comments for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company.

The staff of the Public Service Commission of Missouri, Southwestern Bell Telephone, LP, Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. and Sprint filed written comments.

COMMENT: Three specific comments were directed to this rule, in particular section (2) of the rule. Sprint suggests revising section (2) to delete all but the first sentence of that section. MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. question that the rule would not cost the industry more than five hundred dollars ($500) to preserve and maintain historic information regarding prior cases. The staff of the Public Service Commission suggests modifying the existing language to reduce the amount of information required and therefore reduce the burden it places on a petitioner. The effect of implementing any of these comments would be to not require a petitioner to provide a "list of the telecommunications service(s) the petitioner offers in Missouri."
RESPONSE AND EXPLANATION OF CHANGE: Revision of section (2) is warranted to reduce the burden on a petitioner. Section (2) of the rule will be changed.

4 CSR 240-36.020 Filing Procedures

(2) Only telecommunications carriers, as defined in the Act, providing or in the process of enabling their provision of telecommunications service, as defined in the Act, in the state of Missouri may file petitions under this chapter.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-36.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 2, 2004 (29 MoReg 198–199). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this and associated proposed rules was held March 12, 2004, and the public comment period ended March 5, 2004. At the public hearing, Nathan Williams, Senior Counsel in General Counsel's Office of the Public Service Commission of Missouri, Natelle Dietrich, Regulatory Economist III of the Public Service Commission of Missouri provided oral responses to written comments. In addition, orally at the public hearing, Mike Dandino provided comments for the Office of the Public Counsel; Mimi McDonald, Senior Counsel for Southwestern Bell Telephone, LP, provided comments for Southwestern Bell Telephone, LP; Carl Lumley of Curtis, Oetting, Heinz, Garrett & O'Keefe, PC, provided comments for MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc.; Larry Dority of Fisher and Dority, PC, provided comments for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; and Lisa Chase of Andereck, Evans, Milne, Peace and Johnson, LLP, provided comments for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company.

The staff of the Public Service Commission of Missouri, Southwestern Bell Telephone, LP, Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. and Sprint filed written comments.

COMMENT: Those who appeared at the public hearing generally endorsed this proposed rule as part of the group of rules proposed for Chapter 36 and the staff of the Public Service Commission of Missouri endorsed this rule in its written comments; however, particular issues were raised with respect to certain sections of this rule, as stated in the comments that follow.

RESPONSE: No changes have been made to the rule as a result of these general endorsements.

COMMENT: The staff of the Public Service Commission suggests modification of section (1) to add the word "rates" to the list of matters that may be the subject of mediation under the rule.

RESPONSE: As the commission's staff clarified in response to a query from the presiding officer during the public hearing, section (1) of the proposed rule tracks the language of section 252(a) of the Telecommunications Act of 1996 which lists "interconnection, services or network elements" and makes reference to section 251 of the Telecommunications Act of 1996. Section 251(c)(2)(D) expressly requires that interconnection be "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory . . . ." Specific inclusion of rates in the list of matters that may be the subject of mediation under the rule could be read as a limitation on the items that may be mediated under the rule. No changes have been made to the rule as a result of this comment.

COMMENT: Sprint suggests revising section (2) of the rule to eliminate the possibility under the rule that a commissioner might be the mediator since any commissioner who acted as a mediator might not be able to vote on an agreement presented to the commission after mediation and arbitration and, further, because topics or issues may be discussed or addressed that might have interplay with other commission cases. Southwestern Bell Telephone, LP, in addition to proposing that commissioners not be eligible to serve as mediators, proposed that commission staff also be ineligible to serve as mediators.

RESPONSE AND EXPLANATION OF CHANGE: The commission recognizes that, absent consent of the parties to the agreement, it would be inappropriate for a mediator to vote to accept, reject or modify an agreement reached after arbitration of the same matters that were the subject of the mediation. Further, the commission understands that matters may be disclosed during a mediation that could be relevant to other commission cases. To avoid these issues the commission will revise the rule to eliminate the option of a commissioner being the mediator. The commission staff has the technical expertise needed to conduct successful mediations without the added cost of procuring a mediator, which cost could be an impediment to participation in the process. Use of outside mediators is permissible under the proposed rule. Section (2) of the rule will be changed.

COMMENT: Sprint, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc., suggest modifying section (3) of the rule as to the triggering event for the filing of written summaries with the mediator. Sprint proposes the triggering event be changed to the appointment of the mediator. MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. propose the triggering event be the date of the initial mediation conference addressed in section (4), that the trigger for the date of the initial mediation conference be tied to the date of the request for mediation and that both substantive and procedural issues be addressed at the initial mediation conference. They propose the initial mediation conference occur fifteen (15) days after the filing of the request for mediation rather than twenty-five (25) days and that the written summaries be filed two (2) days before the initial mediation conference.

RESPONSE AND EXPLANATION OF CHANGE: A party to a negotiation that does not request mediation should advise the commission of its willingness to mediate when another party to the negotiation requests the commission to mediate differences between the negotiating parties. Parties to negotiations do not require twenty-five (25) days from the date a request for mediation is made before they should be prepared to discuss procedure and substantive issues during a mediation conference. A new section (2) will be added to the rule, sections (2), (3) and (4) of the rule will be changed, and sections (2) to (18) will be renumbered to sections (3) to (19).

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc., suggest modifying section (10) of the rule to expand it beyond exchange of information in the form of documents or material to include access to information.

RESPONSE AND EXPLANATION OF CHANGE: The rule should be expanded to include participation by the mediator in resolving disputes over access to all forms of information as well as disputes as to the individuals who may have access to information.

COMMENT: The staff of the Public Service Commission suggests that section (11) be revised to state that the mediator may require parties to provide clarification and additional information needed to assist in resolution of the dispute rather than state that the mediator may request clarification and additional information. The staff notes that section (3) states that the mediator may require additional information or material at an earlier stage of the proceeding. Southwestern Bell Telephone, LP suggested that staff's proposed

change not be adopted as the party may not have the information the mediator desires.
RESPONSE AND EXPLANATION OF CHANGE: To emphasize the voluntary nature of mediations the language in section (11) should not be revised; however, the authority of the mediator to require supplemental material or information in section (3) should be revised to authorize that such material or information may be requested. Section (3) of the rule will be changed.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc., assert that the parties do not need the ten (10) days to determine whether a final proposed resolution made by the mediator is acceptable found in section (15) and suggest that five (5) days is adequate.
RESPONSE AND EXPLANATION OF CHANGE: The parties to a negotiation should not need ten (10) days to determine whether a final proposed resolution made by the mediator is acceptable; however, given that days here are calendar days, not business days, seven (7) days is an appropriate time period. Section (15) of the rule will be changed.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc., suggest that the reference in section (17)(A) to section 386.480 could be read as allowing the commission to order disclosure of information exchanged during mediation and, if so read, would inhibit candid mediated negotiations.
RESPONSE: As worded subsection (17)(A) states that "The entire mediation process shall be kept confidential. . . ." The suggested interpretation of the reference to the statute in subsection (17)(A) is, at best, strained. This rule will be promulgated by an order of the commission. Accordingly, the commission exercises its discretion under section 386.480 not to disclose this information. No changes have been made to the rule as a result of this comment.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc., suggest that section (18) could be modified to state that the agreement must be submitted under another proposed rule, 4 CSR 240-36.060.
RESPONSE: As indicated in response to comments made as to proposed rule 4 CSR 240-36.060, the Public Service Commission is withdrawing that rule because the commission is considering the substance of proposed rule 4 CSR 240-36.060 in another rulemaking for another chapter. No changes have been made to this rule as a result of this comment.

4 CSR 240-36.030 Mediation

(2) Response to Request for Mediation—Within five (5) days of a request to the commission for mediation, each party to a negotiation that has not requested mediation shall advise the commission of its willingness to mediate the differences between the negotiating parties.

(3) Appointment of Mediator—When all parties to a negotiation agree to mediation, the commission shall appoint a mediator within ten (10) days of the request for mediation. The mediator shall be an employee of the commission unless the parties consent to the appointment of an outside mediator. The costs of an outside mediator shall be borne equally by the parties. The mediator shall be disqualified from participating as an arbitrator or presiding officer in subsequent proceedings regarding the same negotiation. Presiding officer is defined in 4 CSR 240-2.120.

(4) Parties' Statements—Within thirteen (13) days after the filing of a request for mediation, each party to the negotiation shall submit a written statement to the mediator summarizing the dispute, and shall furnish such other material and information it deems appropriate to familiarize the mediator with the dispute. The mediator may request any party to provide supplemental material or information.

(5) Initial Mediation Conference—Unless the mediator advises the parties otherwise, the mediator shall convene an initial conference within two (2) days after the filing of the parties' statements or the date that they are due, whichever is earlier. At the initial conference, the parties and mediator shall discuss a procedural schedule, and attempt to identify, simplify and limit the issues to be resolved. Each party should be prepared to informally present its position and arguments to the mediator at the initial mediation conference and to engage in mediated negotiations on substantive issues.

(6) Conduct of the Mediation—The mediator, subject to the rules contained herein, shall control the procedural aspects of the mediation.

(7) Mediations Closed to the Public—To provide for effective mediation, participation in a mediation is strictly limited to the parties involved in the negotiation of the agreement contemplated by sections 251 and 252 of the Act that is the subject of the mediation. All mediation proceedings shall remain closed to the public.

(8) Caucusing—The mediator is free to meet and communicate separately with each party. The mediator shall decide when to hold such separate meetings. The mediator may request that there be no direct communication between the parties or between their representatives regarding the dispute without the concurrence of the mediator.

(9) Joint Meetings—The mediator shall decide when to hold joint meetings with the parties and shall fix the time and place of each meeting and the agenda thereof. Formal rules of evidence shall not apply to these meetings or any portion of the mediation proceeding.

(10) No Stenographic Record—No record, stenographic or otherwise, shall be taken of any portion of the mediation proceeding.

(11) Exchange of Additional Information—If any party has a substantial need for documents or other material in the possession of another party, the parties shall attempt to agree on the exchange of requested documents or other material. Further, if any party has substantial need for other information in the possession of another party, or if any party wishes to disclose to its employees information that it obtained from another party, the parties shall attempt to reach agreement on disclosure of the information and who may see it. Should they fail to agree, either party may request a joint meeting with the mediator who shall assist them in their effort to reach an agreement. The parties may enter into nondisclosure agreements. At the conclusion of the mediation process, upon the request of the party that provided the documents or other material to one or more of the mediating parties the recipients shall return such documents or material to the originating party without retaining copies thereof.

(12) Request for Further Information by the Mediator—The mediator may request any mediating party to provide clarification and additional information necessary to assist in the resolution of the dispute.

(13) Responsibility of the Parties to Negotiate and Participate—Parties are expected to initiate proposals for resolution of the dispute, including proposals for partial resolution. Each party is expected to be able to provide to the mediator that party's justification for the terms of any resolution that it proposes.

(14) Authority of the Mediator—The mediator does not have authority to resolve the dispute, but the mediator shall help the parties

attempt to reach a mutually satisfactory resolution. At any time during the mediation, the mediator may recommend to the parties only, oral or written proposals for resolution of the dispute, in whole or in part.

(15) Reliance by Mediator Upon Experts—The mediator may use the services of and rely on experts retained by, or employed by, the commission for purposes of the mediation. Other than subsequent mediations, if any, such experts shall not participate, directly or indirectly, in any subsequent proceedings regarding the same negotiation. The mediator shall disclose to the parties the identities of all experts that provide any services to the mediator for purposes of the mediation.

(16) Impasse and Recommended Resolution of Mediator—In the event that the parties fail to resolve their dispute, the mediator, before terminating the mediation, shall submit to all of the parties a final proposed resolution that addresses all or part of the disputed issues. Each party shall advise the mediator within seven (7) days of the date the mediator issues the proposed resolution as to whether the party accepts the mediator's proposed resolution.

(17) Termination of the Mediation—Any of the following events shall terminate the mediation:

(A) The mediating parties execution of an agreement that resolves all disputed issues;

(B) Written service by a party on the mediator and other parties of a declaration that the mediation proceedings are terminated; or

(C) The mediator's submission to the parties and the commission of a written declaration that further mediation would be futile. Such a declaration shall be conclusory and neutrally worded to avoid any negative inference respecting any party to the mediation.

(18) Confidentiality—

(A) The entire mediation process shall be kept confidential, except for the terms of any final agreements reached during the mediation. The parties, the mediator and any experts used by the mediator, unless all parties agree otherwise, shall not disclose information obtained during the mediation process to anyone that did not participate in the mediation, including, but not limited to, commissioners, commission staff and third parties; provided, however, that the commissioners may be informed in writing, with a copy provided to each party to the mediation, of the identity of the participants and, in the most general manner, the progress of the mediation. Section 386.480, RSMo 2000 is applicable to mediations.

(B) Except as the parties otherwise agree, the mediator, and any experts used by the mediator, shall keep confidential all information contained in any written materials, the materials themselves and any other information submitted to the mediator. All records, reports, or other documents received by the mediator while serving in that capacity shall remain confidential. The mediating parties and their representatives are not entitled to receive or review any such materials or information submitted to the mediator by another party or representative, without the concurrence of the submitting party. At the conclusion of the mediation, the mediator shall return to the submitting party all written materials and other documents which that party provided the mediator.

(C) The mediator shall not divulge records, documents and other information submitted to him or her during the mediation proceeding, nor shall the mediator testify in regard to the mediation, in any subsequent adversarial proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceeding, any of the following:

1. Views expressed or suggestions made by another party with respect to a possible resolution of the dispute;

2. Statements made by another party in the course of the mediation;

3. Proposals made or views expressed by the mediator; or

4. The fact that another party had or had not indicated willingness to accept a resolution proposed by the mediator.

(19) Post-Agreement Procedure—The parties shall present to the commission for approval any final agreements reached during mediation. Such proposed agreements, on the face of the agreement, shall:

(A) Not discriminate against a telecommunications carrier not a party to the mediated agreement;

(B) Be consistent with the public interest, convenience and necessity; and

(C) Comply with the commission's service quality standards for telecommunications services as well as the requirements of all other rules, regulations, and orders of the commission.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-36.040 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 2, 2004 (29 MoReg 199–202). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this and associated proposed rules was held March 12, 2004, and the public comment period ended March 5, 2004. At the public hearing, Nathan Williams, Senior Counsel in General Counsel's Office of the Public Service Commission of Missouri, Natelle Dietrich, Regulatory Economist III of the Public Service Commission of Missouri provided oral responses to written comments. In addition, orally at the public hearing, Mike Dandino provided comments for the Office of the Public Counsel; Mimi McDonald, Senior Counsel for Southwestern Bell Telephone, LP, provided comments for Southwestern Bell Telephone, LP; Carl Lumley of Curtis, Oetting, Heinz, Garrett & O'Keefe, PC, provided comments for MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc.; Larry Dority of Fisher and Dority, PC, provided comments for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; and Lisa Chase of Andereck, Evans, Milne, Peace and Johnson, LLP, provided comments for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company.

The staff of the Public Service Commission of Missouri, Southwestern Bell Telephone, LP, Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. and Sprint filed written comments.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc., suggest that section (1) should include a reference to section 252 of the Telecommunications Act of 1996 as well as a reference to section 251 of that act.
RESPONSE AND EXPLANATION OF CHANGE: Because 47 U.S.C. section 252 addresses negotiations and when parties to negotiations may seek arbitration it should also be referenced in the rule. Section (1) of the rule will be changed.

COMMENT: Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company assert that the rule should provide for notice to carriers that are not parties to the negotiations, but to whom traffic contemplated in the negotiations is destined, to allow them the opportunity to participate in the negotiations as to provisions addressing such traffic. In particular, these commenters suggest adding a requirement in section (3) to disclose whether resolved or unresolved aspects of the agreement in question address traffic destined for any carrier not a party to the agreement. CenturyTel of Missouri, LLC and Spectra Communications Group, LLC support limiting the participants in the arbitration to the parties to the negotiation. Southwestern Bell Telephone, LP also takes the position that only parties to the negotiation should participate in the arbitration and, further, suggests that allowing third parties to participate in the arbitration would violate section 252 of the Act. Southwestern Bell Telephone, LP correctly paraphrases section 252(b)(4)(A) which provides: "The State commission shall limit its consideration of any petition filed under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3)." MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that the appropriate point in the proceedings at which a non-party to the negotiation should be heard is when the negotiated agreement is being presented to the commission for approval, not earlier.
RESPONSE: No changes have been made to section (3) of the rule as a result of this comment.

COMMENT: The staff of the Public Service Commission suggests that subsection (3)(B) be revised to require the petition to only state the petitioner's positions on unresolved issues and not those of the other parties. Southwestern Bell Telephone, LP points out that section 252(b)(2)(A)(ii) of the Telecommunications Act of 1996 requires the petition to a state commission for arbitration to include the position of each of the parties with respect to the unresolved issues and opposes the staff's proposed change.
RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that subsection (3)(D) mandates the organization of a proposed agreement follow that of an agreement previously arbitrated and approved by the commission and that such a requirement should be eliminated, or that at least the limitation to arbitrated agreements should be eliminated.
RESPONSE: The rule does not mandate the organization of a proposed agreement; it expresses a preference. No changes have been made to the rule as a result of this comment.

COMMENT: Sprint, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that the subsection (3)(E) requirement that direct testimony supporting the petitioner's positions be filed with the petition be deleted. In support of their position MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that individuals involved in negotiations also tend to be the witnesses in arbitrations, that similar activities may be taking place in multiple jurisdictions at the same time and that it would be better for the parties and arbitrator to develop a schedule for filing testimony in each arbitration, with filing testimony with the petition an available option.

RESPONSE AND EXPLANATION OF CHANGE: Section 252(b)(2)(A) of the Telecommunications Act of 1996 directs that a petitioner shall provide to the commission all relevant documentation concerning the unresolved issues, the position of each party on each unresolved issue, and any issue discussed and resolved by the parties. Rather than requiring the filing of testimony, subsection (3)(E) will be changed to require the filing of all relevant documentation that supports the petitioner's position on each unresolved issue.

COMMENT: Sprint suggests that the reference to proposed rule 4 CSR 240-36.020(2) be deleted from subsection (3)(F) as Sprint has proposed the certification requirement of proposed rule 4 CSR 240-36.020(2) be deleted.

RESPONSE AND EXPLANATION OF CHANGE: Because the commission has deleted the certification requirement of proposed rule 4 CSR 240-36.020(2) it adopts Sprint's proposal. Subsection (3)(F) of the rule will be revised.

COMMENT: Southwestern Bell Telephone, LP objects to section (4) which provides that the commission will appoint an arbitrator. The bases of the objection are Southwestern Bell Telephone, LP's claims that neither the Telecommunications Act of 1996 nor state statute authorize the commission to delegate its authority to act as an arbitrator. MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that as the rule is drafted, the arbitrator acts as a special master who develops the record and recommends a decision to the Public Service Commission which ultimately decides the arbitration.

RESPONSE: Under the rule, the Public Service Commission ultimately makes the arbitration decision. No changes have been made to the rule as a result of this comment.

COMMENT: Southwestern Bell Telephone, LP objects to the authorization for the arbitrator to utilize entire package arbitration found in subsection (5)(A) for providing no standard for when the arbitrator may use this approach, for providing no deadline by which parties will know what approach the arbitrator is using, for limiting the commission's ability to make decisions on each issue and because entire package arbitration appears inconsistent with section (19) which requires the arbitrator's report to the commission to address each issue and for the arbitrator, on each issue, to adopt the position of one of the parties. MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. echo the concern with use of entire package arbitration pointing out that it could force the acccceptance of bad results on particular issues.

RESPONSE AND EXPLANATION OF CHANGE: Unresolved issues being decided by arbitration should be decided issue-by-issue. Thus, final offer arbitration should be issue-by-issue final arbitration, unless the parties choose to employ entire package final arbitration. Subsection (5)(A) of the rule will be changed.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that subsection (5)(B) should be modified to allow a settlement to go to the arbitrator rather than the commission as the settlement is likely to be partial rather than a total settlement and that parties should be allowed to amend their final offers with the consent of the other parties. Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company propose modifying subsection (5)(B) to prohibit negotiations of provisions that would affect third party carriers unless those carriers agree to any settlements reached and submitted to the commission. CenturyTel of Missouri, LLC and Spectra Communications Group, LLC support limiting the participants in the arbitration to the parties to the negotiation. Southwestern Bell Telephone, LP also takes the position that only parties to the negotiation should participate in the arbitration and, further, suggests that allowing third parties to participate in the arbitration would violate section 252 of the Act. Southwestern Bell Telephone, LP correctly paraphrases section 252(b)(4)(A) which provides: "The State commission shall limit its consideration of any petition filed under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3)." MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that the appropriate point in the proceedings at which a non-party to the negotiation should be heard is when the negotiated agreement is being presented to the commission for approval, not earlier.

RESPONSE AND EXPLANATION OF CHANGE: The rule should be changed to state that settlements may be submitted to the arbitrator after final arbitration offers are submitted. Section (5) of the rule will be changed in response to this comment.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that subsection (5)(D) is duplicative of subsection (5)(E) and that subsections (5)(D), (5)(E) and (5)(F) should refer to the Federal Communication Commission's rules in addition to the commission's rules. The staff of the Public Service Commission recommends expanding paragraph (5)(E)2. to include terms and conditions as well as rates. Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company propose modifying subsection (5)(F) to authorize the arbitrator to adopt a result submitted by an intervening carrier that is not a party to the negotiation. CenturyTel of Missouri, LLC and Spectra Communications Group, LLC support limiting the participants in the arbitration to the parties to the negotiation. Southwestern Bell Telephone, LP also takes the position that only parties to the negotiation should participate in the arbitration and, further, suggests that allowing third parties to participate in the arbitration would violate section 252 of the Act. Southwestern Bell Telephone, LP correctly paraphrases section 252(b)(4)(A) which provides: "The State commission shall limit its consideration of any petition filed under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3)." MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that the appropriate point in the proceedings at which a non-party to the negotiation should be heard is when the negotiated agreement is being presented to the commission for approval, not earlier.

RESPONSE AND EXPLANATION OF CHANGE: The rule should be changed to eliminate duplication, state that the final offer must comply with the applicable rules of the Federal Communications Commission and clarify that rates are not the only issue for interconnection. Section (5) of the rule will be changed in response to this comment.

COMMENT: Sprint, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that the section (7) requirement that direct testimony supporting the respondent's positions be filed with the response to the petition be deleted. In support of their position MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that individuals involved in negotiations also tend to be the witnesses in arbitrations, that similar activities may be taking place in multiple jurisdictions at the same time and that it would be better for the parties and arbitrator to develop a schedule for filing testimony in each arbitration.

RESPONSE AND EXPLANATION OF CHANGE: Section 252(b)(3) of the Telecommunications Act of 1996 directs that a party responding to a petition may provide to the commission such additional information that it wishes to provide. Rather than requiring the filing of testimony, section (7) will be changed to require the filing of all relevant documentation that supports the responding party's position on each unresolved issue.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that cost studies upon which the incumbent local exchange carrier relies for rates should be made available to the other party(ies) to the negotiation, subject to any applicable protective order or nondisclosure agreement, immediately upon the filing of the petition for arbitration. Southwestern Bell Telephone, LP responds that such a requirement would violate section 252(b)(3) of the Telecommunications Act of 1996 which allows twenty-five (25) days for response to a petition for arbitration.

RESPONSE: Ideally, where rates are involved, the parties will be exchanging cost study information during their negotiations and long before the filing of a petition for arbitration. The Public Service Commission notes that 47 CFR section 51.505(e)(2) requires that where the commission considers a cost study for purposes of establishing rates, the cost study be in the record before the commission; thus, cost studies upon which the parties want the commission to rely should be included in the documentation filed with the petition or response. No changes to the rule have been made as a result of this comment.

COMMENT: The staff of the Public Service Commission states that section (7) requires the respondent to file a proposed agreement that identifies resolved issues and unresolved issues in duplication of the document that the petitioner is required to file under section (3).

RESPONSE: Under section (3) the petitioner is to file a proposed agreement that identifies resolved issues with the agreed to language and unresolved issues with the petitioner's proposed language. Under section (7) the respondent is to file a proposed agreement that identifies the language the parties have agreed to (resolved issues) and both the petitioner's and the respondent's proposed language for unresolved issues. No changes to the rule have been made as a result of this comment.

COMMENT: Sprint suggests that section (9) be modified to eliminate references to the filing of rebuttal testimony consistent with its view that the dates for filing of all testimony should be set after the initial meeting referred to in section (9). MCI WorldCom

Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that the holding of an initial conference be mandatory, not optional.

RESPONSE AND EXPLANATION OF CHANGE: Because the Public Service Commission has revised sections (3) and (7) of the rule from requiring "direct testimony" to requiring "all relevant documentation" be filed with the petition and response, the modifier "rebuttal" should not be used with the word "testimony" in this section. Section (9) of the rule will be changed.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest that sections (10) and (13) be modified to give the arbitrator more flexibility in the timing of conferences. Southwestern Bell Telephone, LP raises a concern that the language of section (10) leaves it to the arbitrator's discretion to determine which issues are factual and require evidentiary hearings and the apparent inflexibility of the arbitrator to vary the timing under which conferences and hearings are to begin.

RESPONSE AND EXPLANATION OF CHANGE: Sections (10) and (13) will be revised to clarify the commission's intent that identification of factual issues will be a collaborative process and that the arbitrator has discretion in the scheduling of the conferences and hearings.

COMMENT: Sprint suggests that the unresolved issues should be limited to those framed by the petition and response, and suggests modifying section (11) to eliminate the reference to the revised statement of unresolved issues.

RESPONSE: The revised statement of unresolved issues is limited in section (8) of the rule to a listing of issues raised in the petition and response. No changes to the rule have been made as a result of this comment.

COMMENT: Sprint expressed concern with the use by the arbitrator of outside experts contemplated in section (12). In particular Sprint noted the time required to retain such an expert and the likelihood of one or more parties questioning the neutrality of the expert. MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. comment that outside experts, regardless of whether on advisory staff, should not be affiliated with the parties, including in the recent past. Southwestern Bell Telephone, LP objects to section (12) in its entirety asserting the section apparently contemplates that advisory staff will provide information to the arbitrator that is not shared with the parties implicating due process as expressed in both the state and federal constitutions, and in Southwestern Bell Telephone, LP's view, sections 386.420(1), 435.370(2), 491.070 and 536.070(2) of the *Revised Statutes of Missouri*. Southwestern Bell Telephone, LP asserts that if the commission employs advisory staff under a rule, then the rule must specifically limit the permissible scope of activities and must specifically prohibit the advisory staff from providing input regarding any factual or mixed factual/legal issues before the arbitrator for resolution. The staff of the Public Service Commission suggests that the list of those with whom advisory staff is prohibited from having *ex parte* contacts during the arbitration be expanded to include staff or outside individuals who provide responses to questions in the arbitration.

RESPONSE AND EXPLANATION OF CHANGE: As proposed, the rule limits the role of advisory staff to providing legal advice and other analysis, not to creating extra-record evidence. Nothing in the rule requires that outside experts not be retained until after the filing of a petition for arbitration. Nothing in the rule would require biased outside experts. While there are legitimate concerns raised as to how advisory staff and outside experts may be utilized, nothing in the proposed rule itself is a violation of due process embodied in state or federal constitution, or law. Unlike the identity of parties, who are known at the outset of the arbitration, the identity of commission staff or outside individuals who will provide responses to questions likely will not be known until the arbitration process is well underway. Rather than establishing by rule a blanket prohibition on *ex parte* contacts by the arbitrator's advisory staff with commission staff and outside individuals who answer questions, the commission will leave it to the arbitrator's discretion to conduct the proceedings in a fashion that avoids any appearance of impropriety and comports with due process. However, changes will be made to the rule to emphasize and clarify that questions and responses to questions posed to commission staff members and outside experts will be part of the record of the arbitration, and that these persons will be subject to cross-examination by parties on their responses. Further, changes will be made to emphasize and clarify that the arbitrator's advisory staff is not the commission's advisory staff allowed by Missouri statute and that the role of the arbitrator's advisory staff is to provide legal advice and analysis, not to provide evidence, extra-record or otherwise. Section (12) of the rule will be changed.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest specifying that "here" in section (15) refers to "this rule 36.040."

RESPONSE AND EXPLANATION OF CHANGE: Clarity will be enhanced by making the reference in the second clause of the second sentence of section (15) from "here" to "in this rule." Section (15) of the rule will be changed.

COMMENT: The staff of the Public Service Commission suggests modifying section (16) to clarify that commission staff or outside individuals may participate in arbitration conferences or hearings to the extent required for them to provide answers to questions posed to them by the arbitrator as contemplated in section (12). MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. echo the staff's concern and state that those not parties to a negotiation should raise their concerns when the agreement is being presented to the commission for approval, not before. Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company assert that section (16) of the rule should be modified to allow participation in the arbitration proceedings of carriers to which traffic addressed in the negotiation is destined. Southwestern Bell Telephone, LP objects to the use of advisory staff out of a concern that due process will be violated and requests the reference to advisory staff be stricken from section (16). CenturyTel of Missouri, LLC and Spectra Communications Group, LLP oppose participation in the arbitration of those not parties to the negotiation. Public Counsel points out its statutory role and requests modification of the rule to include it as a party to arbitrations.

RESPONSE AND EXPLANATION OF CHANGE: As indicated in its response to proposed changes to section (12), the use of advisory staff as contemplated in the rule is not a violation of due process embodied in state or federal constitution, or law. Only those parties to the negotiation should participate in arbitration conferences and hearings. Section (16) of the rule will be changed to clarify that commission staff and outside experts may participate in arbitration conferences or hearing, but only to the extent required to provide answers to questions posed by the arbitrator as contemplated in section (12) of the rule.

COMMENT: Southwestern Bell Telephone, LP objects to the requirement in section (17) that arbitration hearings be held in an open forum and requires the arbitrator to consult with the commission to close proceedings from the public.
RESPONSE: Section (17) provides that requests to close proceedings from the public shall be made in writing and that the arbitrator will consult with the commission in acting on such a request. Although Southwestern Bell Telephone, LP's comment is drafted on the apparent premise that such requests will be made during the conferences and hearings, nothing in the rule prohibits such a request from being made in advance of such proceedings and, given the time constraints to which the commenter alludes, the rule contemplates that such requests typically will be made in advance. No changes to the rule have been made as a result of this comment.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. suggest modification of section (18) to expressly state that the arbitrator has discretion to extend the time within which post-hearing briefs may be filed.
RESPONSE AND EXPLANATION OF CHANGE: The arbitrator's authority to extend the time within which post-hearing briefs should be more explicitly stated in the rule. Section (18) of the rule will be changed.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission assert that restrictions on *ex parte* communications should attach upon the filing of the petition.
RESPONSE AND EXPLANATION OF CHANGE: In 2003 the Missouri Legislature enacted House Bill 208, now codified at section 386.210 of the *Revised Statutes of Missouri*. That bill establishes when appropriate *ex parte* communications may take place and how disclosure of *ex parte* communications is to occur. The same timing and process should be followed in arbitrations under the Act. The reference to Rule 4 CSR 240-4.020 in section (22) will be changed to refer to section 386.210, RSMo. Section (22) of the rule will be revised.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission suggest that rejection of the arbitrator's report as an option of the commission in section (24) should not be allowed as the commission must make a decision, or that if the report is rejected that the commission must make its own decisions. Southwestern Bell Telephone, LP objects to section (24) and asserts that it should be modified to permit the parties to conduct oral argument and present evidence on any objection to the final arbitrator's report.
RESPONSE AND EXPLANATION OF CHANGE: The rule should be changed to emphasize that it is the commission that makes the final determinations on the unresolved issues. Parties will have had ample opportunity to present their positions on the disputed issues in a record that the commission can review; therefore, the opportunity for oral argument and to present evidence to the commission on objections to the arbitrator's report need not be mandatory. Section (24) of the rule will be changed.

4 CSR 240-36.040 Arbitration

(1) Who May Petition for Arbitration—A party to a negotiation entered into pursuant to sections 251 and 252 of the Act may file a petition for arbitration.

(3) Content—A petition for arbitration must contain:

(E) All relevant documentation that supports the petitioner's position on each unresolved issue; and

(F) Documentation that the petition complies with the time requirements of 4 CSR 240-36.040(2).

(5) Style of Arbitration—An arbitrator, acting pursuant to the commission's authority under section 252(e)(5) of the Act, shall use final offer arbitration, except as otherwise provided in this section:

(A) Final offer arbitration shall take the form of issue-by-issue final offer arbitration, unless all of the parties agree to the use of entire package final offer arbitration. The arbitrator in the initial arbitration meeting shall set time limits for submission of final offers and time limits for subsequent final offers, which shall precede the date of a limited evidentiary hearing.

(B) Negotiations among the parties may continue, with or without the assistance of the arbitrator, after final arbitration offers are submitted. Parties may submit to the arbitrator or commission, as appropriate, any settlements reached following such negotiations.

(D) Each final offer submitted by the parties to the arbitrator shall:

1. Meet the requirements of section 251 of the Act, including the rules prescribed by the commission and the Federal Communications Commission pursuant to that section;

2. Establish interconnection, services, or access to unbundled network elements according to section 252(d) of the Act, including the rules prescribed by the commission and the Federal Communications Commission pursuant to that section; and

3. Provide a schedule for implementation of the agreement.

(E) If a final offer submitted by one (1) or more parties fails to comply with the requirements of this section or if the arbitrator determines in unique circumstances that another result would better implement the Act, the arbitrator has discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the commission and the Federal Communications Commission pursuant to that section.

(7) Opportunity to Respond—Pursuant to subsection 252(b)(3) of the Act, any party to a negotiation, which did not file a petition for arbitration ("respondent"), shall file with the commission, within twenty-five (25) days of the date the petition for arbitration is filed with the commission, a response to the petition for arbitration. For each issue listed in the petition, the respondent shall restate the issue followed by the respondent's position on that issue. The respondent shall also identify and present any additional issues for which the respondent seeks resolution and provide such additional information and evidence necessary for the commission's review. The respondent shall include, in the response, a document containing the language upon which the parties agree and, show where the parties disagree, and provide both the petitioner's proposed language (bolded) and the respondent's proposed language (underscored). Finally, the response must contain all relevant documentation that supports the respondent's position on each issue identified in the response that remains unresolved. On the same day that the respondent files a response with the commission, the respondent must serve a copy of the response, and all supporting documentation, on each other party to the negotiation.

(9) Initial Arbitration Meeting—The arbitrator may call a mandatory initial meeting for purposes such as setting a procedural schedule, establishing a time limit for submission of final offers, allowing the filing of testimony, setting times by which testimony may be filed, simplifying issues, or resolving the scope and timing of discovery.

(10) Arbitration Conferences and Hearings—The arbitration shall consist of markup conferences and limited evidentiary hearings. At the markup conferences, the arbitrator shall hear the concerns of the

parties, determine whether the parties can further resolve their differences, and, with the parties, identify factual issues that may require limited evidentiary hearings. The arbitrator shall also announce rulings at the conferences as the issues are resolved. The conduct of the conferences and hearings shall be noticed on the commission's hearings calendar and notice shall be provided to all parties on the service list. Parties are expected to respond to questions from the arbitrator, and the arbitrator's advisory staff. The parties shall be given the opportunity to present witnesses at an on-the-record evidentiary hearing, and to cross-examine the witnesses of the other party(ies) to the arbitration. These conferences and hearings shall commence as soon as possible after all responses to the petition for arbitration are filed with the commission.

(12) Arbitrator's Reliance on Experts—The arbitrator may rely upon:

(A) An arbitrator advisory staff to assist the arbitrator in the decision-making process. The arbitrator shall appoint the members of the arbitrator advisory staff from either or both commission staff and retained outside experts. The arbitrator shall inform the parties of the names of the members of the arbitrator advisory staff. Arbitrator advisory staff shall not have *ex parte* contacts with any of the parties individually regarding the issues in the negotiation. The arbitrator advisory staff's role is limited to providing legal advice and other analysis to the arbitrator, not to provide evidence. Persons that advised a mediator regarding the same negotiation are ineligible to serve as members of the arbitrator advisory staff.

(B) Responses to questions posed by the arbitrator that are made by commission staff members or outside individuals who are not members of advisory staff. Upon the arbitrator's request, and after notice to the parties to the arbitration, the arbitrator may pose questions to commission staff members or outside individuals who are not advisory staff. These questions shall be answered either in written form or at an arbitration session attended by the parties. The parties may submit written responses to answers to technical questions in a timely manner as determined by the arbitrator and shall be entitled to cross-examine any commission staff member or outside individual regarding the answer he, or she, provides in response to a question posed by the arbitrator. These questions and responses shall be included in the record before the arbitrator and commission.

(13) Close of Arbitration—The conference and hearing process is to conclude within ten (10) days of the commencement of the first hearing, unless the arbitrator determines otherwise.

(15) Authority of the Arbitrator—In addition to authority granted elsewhere in this rule, the arbitrator shall have the same authority in conducting the arbitration as a presiding officer, as defined in 4 CSR 240-2.120, has in conducting hearings under the commission's rules of practice and procedure. Because of the short time frame mandated by the Act, the arbitrator shall have flexibility to set out procedures that may vary from those set out in this rule; however, the arbitrator's procedures must substantially comply with the procedures listed herein. The arbitrator may vary from the schedule in this rule as long as the arbitrator complies with the deadlines contained in the Act.

(16) Participation in the Arbitration Conferences and Hearings—Participation in the arbitration conferences and hearings is strictly limited to the parties in a negotiation pursuant to sections 251 and 252 of the Act, the arbitrator, the arbitrator's advisory staff and, only to the extent needed to provide the answer(s) to a question(s) posed by the arbitrator under the procedure of section (12), commission staff and outside experts. Only those parties involved in the negotiation shall be parties in the arbitration. Others that formally request to be kept apprised of the arbitration proceeding will be placed on the "Information Only" portion of the service list.

(18) Filing of Post-Hearing Briefs—Each party to the arbitration may file a post-hearing brief within seven (7) days of the end of the markup conferences and hearings, unless the arbitrator extends the due date. Post-hearing briefs shall present, for each disputed issue, the party's argument in support of adopting its recommended position, with all supporting evidence and legal authorities cited therein. The arbitrator may limit the length of post-hearing briefs. The arbitrator shall also establish a time for the filing of reply briefs. The arbitrator may also permit or require the parties to file proposed arbitrator's reports or decisions.

(22) *Ex Parte* Rules Applicable to Arbitration Proceedings—the restrictions on *ex parte* communications contained in 386.210, RSMo apply to arbitration proceedings held under this rule.

(24) Commission's Decision—The commission may conduct oral argument concerning comments on the arbitrator's final report and may conduct evidentiary hearings at its discretion. The commission shall make its decision resolving all of the unresolved issues no later than the two hundred seventieth day following the request for negotiation. The commission may adopt, modify or reject the arbitrator's final report, in whole or in part.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-36.050 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 2, 2004 (29 MoReg 202). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this and associated proposed rules was held March 12, 2004, and the public comment period ended March 5, 2004. At the public hearing, Nathan Williams, Senior Counsel in General Counsel's Office of the Public Service Commission of Missouri, Natelle Dietrich, Regulatory Economist III of the Public Service Commission of Missouri provided oral responses to written comments. In addition, orally at the public hearing, Mike Dandino provided comments for the Office of the Public Counsel; Mimi McDonald, Senior Counsel for Southwestern Bell Telephone, LP, provided comments for Southwestern Bell Telephone, LP; Carl Lumley of Curtis, Oetting, Heinz, Garrett & O'Keefe, PC, provided comments for MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc.; Larry Dority of Fisher and Dority, PC, provided comments for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; and Lisa Chase of Andereck, Evans, Milne, Peace and Johnson, LLP, provided comments for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company.

The staff of the Public Service Commission of Missouri, Southwestern Bell Telephone, LP, Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company, MCI WorldCom

Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. and Sprint filed written comments.

COMMENT: The staff of the Public Service Commission suggests that because of the use of commission resources in conducting arbitrations, the parties to them should not be able to agree to a different result than that reached by the commission after the commission makes its decision. MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC, AT&T of the Southwest, Inc. and Southwestern Bell Telephone, LLP disagree with the commission's staff and suggest that the parties should always be free to negotiate an agreement.

RESPONSE: A goal of the Telecommunications Act of 1996 is for parties to voluntarily enter into agreements. No changes have been made to the rule as a result of this comment.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc., suggest that section (1) should be changed to state that the commission will establish the date for the filing of the agreement when it makes its arbitration decision rather than establishing a time frame of seven (7) days. Sprint proposes the time frame be extended from seven (7) days to ten (10) days.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees that it should be explicitly clear that the commission can vary from the seven (7) days established in the rule. Section (1) of the rule will be changed.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. point out that the reference in section (2) to section 36.050(3) should instead be to section 36.050(4), the section that references standards for review. Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company argue that the time frame in this section as well as the thirty (30) days for commission action in section (3) is inadequate to frame and decide issues regarding traffic that is the subject of the agreement that is destined to a carrier that is not a party to the agreement. MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. assert that those not parties to a negotiation should raise their concerns when the agreement is being presented to the commission for approval. CenturyTel of Missouri, LLC and Spectra Communications Group, LLC oppose that such issues be raised during the arbitration process, i.e., before the arbitrated agreement is presented to the commission for approval.

RESPONSE AND EXPLANATION OF CHANGE: The reference in section (2) to section 36.050(3) will be corrected to refer to section 4 CSR 240-36.050(4). Additionally, since section 4 CSR 240-36.050(4) references the standards rather than providing them, the word "provided" in the last clause of the first sentence of section (2) will be revised to "referenced."

COMMENT: Sprint, Southwestern Bell Telephone, LLP raise a concern regarding the approval of an arbitrated agreement in the absence of commission action within thirty (30) days of the filing of the arbitrated agreement.

RESPONSE AND EXPLANATION OF CHANGE: Section 252(e)(4) of the Telecommunications Act of 1996 provides that an arbitrated agreement is deemed approved if the commission does not act upon the submitted agreement within thirty (30) days of the submission. Section (3) will be revised to reflect that, in the absence of commission action within thirty (30) days of submission, the agreement is deemed approved.

COMMENT: Sprint argues that meeting quality of service standards should be outside the scope of an interconnection agreement and proposes deletion of the last three (3) clauses of the last sentence of section (4).

RESPONSE: Section 252(e)(3) of the Telecommunications Act of 1996 specifically reserves to state commissions the right to establish and enforce other requirements of state law that do not conflict with those of the federal act and rules including "compliance with intrastate telecommunications service quality standards or requirements." No changes have been made to the rule as a result of this comment.

COMMENT: MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. questions both the title and content of section (6) asserting the section should be rewritten to conform to section 252(e)(6) of the Telecommunications Act of 1996.

RESPONSE AND EXPLANATION OF CHANGE: The section will be revised to conform to the requirement of section 252(e)(6) of the Telecommunications Act of 1996 that review of state commission action will be by a federal district court.

4 CSR 240-36.050 Commission Approval of Agreements Reached by Arbitration

(1) Filing of Conformed Agreement—Unless the commission orders otherwise, within seven (7) days of the filing of a commission order approving, rejecting or modifying the arbitrator's final report, the parties shall file with the commission the entire agreement that was the subject of the negotiation. The agreement shall conform in all respects to the commission's order. Concurrently with the filing of the conformed agreement, the parties shall each file statements that indicate whether the agreement complies with the requirements of sections 251 and 252 of the Act, Missouri statutes, and the commission's rules.

(2) Within ten (10) days of the filing of the agreement, anyone may file comments concerning the agreement; however, such comments shall be limited to the standards for review referenced in section 4 CSR 240-36.050(4) of this chapter. The commission, upon its own motion, may hold additional informal hearings and may hear oral argument from the parties to the arbitration.

(3) Commission Review of Arbitrated Agreement—Within thirty (30) days following the filing of the arbitrated agreement, the commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations) pursuant to subsection 252(e) of the Act and all its subparts. In the event the commission fails to act on the arbitrated agreement within thirty (30) days of when the agreement is filed, the agreement shall be deemed approved.

(6) Review of Commission Decision—Any party aggrieved by a commission decision made under this rule may seek relief in an appropriate federal district court pursuant to section 252(e)(6) of the Act.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission withdraws a rule as follows:

4 CSR 240-36.060 Commission Approval of Agreements Reached by Mediation or Negotiation **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 2, 2004 (29 MoReg 203). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing on this and associated proposed rules was held March 12, 2004, and the public comment period ended March 5, 2004. At the public hearing, Nathan Williams, Senior Counsel in General Counsel's Office of the Public Service Commission of Missouri, Natelle Dietrich, Regulatory Economist III of the Public Service Commission of Missouri provided oral responses to written comments. In addition, orally at the public hearing, Mike Dandino provided comments for the Office of the Public Counsel; Mimi McDonald, Senior Counsel for Southwestern Bell Telephone, LP, provided comments for Southwestern Bell Telephone, LP; Carl Lumley of Curtis, Oetting, Heinz, Garrett & O'Keefe, PC, provided comments for MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc.; Larry Dority of Fisher and Dority, PC, provided comments for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; and Lisa Chase of Andereck, Evans, Milne, Peace and Johnson, LLP, provided comments for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company.

The staff of the Public Service Commission of Missouri, Southwestern Bell Telephone, LP, Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. and Sprint filed written comments.

COMMENT: Those who appeared at the public hearing generally endorsed this proposed rule as part of the group of rules proposed for Chapter 36; however, the commission's staff noted that the subject of this rule is also the subject of another rulemaking this commission is undertaking and that, as worded, this rule would conflict with that pending rulemaking.
RESPONSE: This proposed rule is withdrawn because the subject of the rule is also the subject of another rulemaking this commission is undertaking and this proposed rule conflicts with the language being considered for that rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission withdraws a rule as follows:

4 CSR 240-36.070 Commission Notice of Adoption of Previously Approved Agreement **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 2, 2004 (29 MoReg 203–204). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing on this and associated proposed rules was held March 12, 2004, and the public comment period ended March 5, 2004. At the public hearing, Nathan Williams, Senior Counsel in General Counsel's Office of the Public Service Commission of Missouri, Natelle Dietrich, Regulatory Economist III of the Public Service Commission of Missouri provided oral responses to written comments. In addition, orally at the public hearing, Mike Dandino provided comments for the Office of the Public Counsel; Mimi McDonald, Senior Counsel for Southwestern Bell Telephone, LP, provided comments for Southwestern Bell Telephone, LP; Carl Lumley of Curtis, Oetting, Heinz, Garrett & O'Keefe, PC, provided comments for MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc.; Larry Dority of Fisher and Dority, PC, provided comments for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; and Lisa Chase of Andereck, Evans, Milne, Peace and Johnson, LLP, provided comments for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company.

The staff of the Public Service Commission of Missouri, Southwestern Bell Telephone, LP, Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. and Sprint filed written comments.

COMMENT: Those who appeared at the public hearing generally endorsed this proposed rule as part of the group of rules proposed for Chapter 36; however, the commission's staff noted that the subject of this rule is also the subject of another rulemaking this commission is undertaking and that, as worded, this rule would conflict with that pending rulemaking.
RESPONSE: This proposed rule is withdrawn because the subject of the rule is also the subject of another rulemaking this commission is undertaking and this proposed rule conflicts with the language being considered for that rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission withdraws a rule as follows:

4 CSR 240-36.080 Commission Approval of Amendments to Existing Commission-Approved Agreements **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 2, 2004 (29 MoReg 204). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: A public hearing on this and associated proposed rules was held March 12, 2004, and the public comment period ended March 5, 2004. At the public hearing, Nathan Williams, Senior Counsel in General Counsel's Office of the Public Service Commission of Missouri, Natelle Dietrich, Regulatory Economist III of the Public Service Commission of Missouri provided oral responses to written comments. In addition, orally at the public hearing, Mike Dandino provided comments for the Office of the Public Counsel; Mimi McDonald, Senior Counsel for Southwestern Bell Telephone, LP, provided comments for Southwestern Bell Telephone, LP; Carl Lumley of Curtis, Oetting, Heinz, Garrett & O'Keefe, PC, provided comments for MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc.; Larry Dority of Fisher and Dority, PC, provided comments for CenturyTel of Missouri, LLC and Spectra Communications Group, LLC; and Lisa Chase of Andereck, Evans, Milne, Peace and Johnson, LLP, provided comments for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company.

The staff of the Public Service Commission of Missouri, Southwestern Bell Telephone, LP, Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc. and Northeast Missouri Rural Telephone Company, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., Intermedia Communications, Inc., MCImetro Access Transmission Services, LLC and AT&T of the Southwest, Inc. and Sprint filed written comments.

COMMENT: Those who appeared at the public hearing generally endorsed this proposed rule as part of the group of rules proposed for Chapter 36; however, the commission's staff noted that the subject of this rule is also the subject of another rulemaking this commission is undertaking and that, as worded, this rule would conflict with that pending rulemaking.
RESPONSE: This proposed rule is withdrawn because the subject of the rule is also the subject of another rulemaking this commission is undertaking and this proposed rule conflicts with the language being considered for that rule.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 1—Organization; General Provisions

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.008, RSMo Supp. 2003 and 226.130 and 536.016, RSMo 2000, the commission adopts a rule as follows:

7 CSR 10-1.020 Subpoenas **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 1, 2004 (29 MoReg 384–389). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 80—Payment of Residential Facilities

ORDER OF RULEMAKING

By the authority vested in the Children's Division under section 207.020, RSMo 2000, the director adopts a rule as follows:

13 CSR 35-80.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 17, 2004 (29 MoReg 311–313). The sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after the publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The order of rulemaking was amended pursuant to a hearing held by Joint Committee on Administrative Rules on June 8, 2004. Section (5) was added to include a termination date. The Children's Division received one hundred forty (140) letters of comment. One hundred fourteen (114) letters were from board members or otherwise represented sixteen (16) providers affected by the regulations. Substantially all letters requested that comments be considered for both regulation 13 CSR 35-80.010 and 13 CSR 35-80.020 although the specific comments may only be applicable to one of the regulations. We have therefore addressed all comments under both regulations.

COMMENT: One letter expressed concern that the foster care maintenance costs which would be "priced" under the methodology would affect the current and future POS contracts.
RESPONSE: The litigation brought by the Missouri Child Care Association specifically challenged the previous methodology on the grounds it did not comply with the requirements regarding Title IV-E foster care maintenance payments to residential care providers. The Child Welfare Act strictly limits the services that may be provided and claimed as foster care maintenance. The proposed regulations were designed to identify all foster care maintenance costs that may be claimed under Title V-E and develop a reasonable reimbursement level. We are similarly concerned that the ability to leverage federal funds or recognize the cost for other services provided in the residential setting has been limited and have reviewed payment methodologies approved in other states. The reporting requirements will provide an opportunity to identify the full scope of costs and revenue streams for residential providers. As that information becomes available and we move beyond the current litigation, the division looks forward to working with residential treatment providers to develop favorable reimbursement contracts and ensure adequate services are provided.

COMMENT: Multiple comments objected to the proposed wording in 13 CSR 35-80.010(2)(E) which outlines the statutory process the Children's Division must follow in order to obtain funding. The comments stated that the proposed methodology was budget based and would be in violation of the Child Welfare Act and ruling by the Western District Court in the matter brought by the Missouri Child Care Association d/b/a Missouri Coalition of Children's Agencies.
RESPONSE: Although the issues raised could be resolved by removing subsection (2)(E), the Children's Division believes it is important to include a summary of the state budgetary process in the General Principles section in order to inform the public and affected

providers. The division sought assistance from experts in the field of child welfare as a result of the litigation to ensure the methodology meets the requirements of the Child Welfare Act. The proposed methodology is cost based and may result in rates higher than those previously paid. The Department of Social Services (DSS) may only expend funds appropriated by the General Assembly pursuant to the *Missouri Constitution*, therefore, the division needs the opportunity for the appropriations process to work.

COMMENT: One hundred thirty (130) letters of comment included comments objecting to the use of statewide averages as part of the methodology used to determine reimbursement rates. Some comments objected specifically to the use of statewide averages for determination of the room and board component. Additional comments objected to use of statewide averages in any context because they failed to take into consideration the location, size and type of service. Many comments requested that a methodology be changed to facility specific rates. Seventeen (17) letters also stated that payment rates that exceed the reasonable costs for the specific provider would be in violation of federal requirements.
RESPONSE: The litigation initiated by the Missouri Child Care Association makes it necessary to require cost information from all residential child care agencies and to determine the actual cost for, and only for, foster care maintenance in a residential care setting. The division sought assistance from experts in the field of child welfare and developed a methodology using statewide data that is particularly suited in this situation. The division had no desire to encourage additional litigation or administrative costs inherent with individual facility specific rates and current contracts appropriately emphasize client cost differences rather than facility cost differences. Also, facility specific data accurately reflecting foster care maintenance costs and the time necessary for analysis and development of cost controls necessary for facility specific rates prior to adoption of a compliant methodology was not available. The division therefore chose to determine a reasonable cost using facilities appropriately segregated into four (4) classes. The use of a class weighted statewide average allows the maximum flexibility with proper cost controls for unique facility circumstances and encourages efficient providers to provide greater access to clients. Most residential care agencies are small, less than twenty-five (25) clients, and statistically valid time studies necessary to determine costs can be conducted on a statewide basis with minimal intrusion on specific facilities. Numerous competing factors may affect the "accounting" costs reflected by an individual provider. Choices as simple as financing versus investment can create significant cost variances without any difference in the care provided. We have determined that use of a statewide room and board component coupled with the four (4) child-specific daily supervision components will result in a reasonable cost based rate in compliance with the Child Welfare Act.

COMMENT: One hundred twenty-six (126) letters included comments stating that the rule did not provide for an internal appeals process.
RESPONSE: The desk review/audit process will provide an opportunity for individual providers to verify their cost data. The methodology determines the reasonable foster care maintenance cost and an appeals process, which may be applicable to facility specific rates, is unnecessary. An internal appeals process will not be developed to allow providers to challenge applicability of the methodology to their specific facility.

COMMENT: One hundred twenty-nine (129) letters stated that section (4) failed to take into consideration changes in the cost of living or provide for an annual inflation factor.
RESPONSE AND EXPLANATION OF CHANGE: The Children's Division believes 13 CSR 35-80.010 (4)—Inflation/Trend Factor Adjustments adequately addresses how those issues will be considered and provides for the specific indices to be used. In response to concerns regarding the inadequacy of the COLA that may be provided state employees, the Midwest Region Consumer Price Index for all Urban consumers (CPI-U) has been adopted as the index for adjusting the child-specific daily supervision component. The division has corrected subsection (4)(A) to reflect that the base rate under the proposed regulation is being established for State Fiscal Year 2005 and to clarify that the percentage change will be determined using the most recent calendar year data available. Subsection (4)(B) has been revised to further clarify that the budget request for interim years will be developed using the indices identified in subsection (4)(A).

COMMENT: Seventy-four (74) of the comment letters stated that the cost of implementation for the private or public entities had not been identified nor did the rule state that all costs of implementation would be reimbursed by the state.
RESPONSE: The applicable fiscal notes have been included with the appropriate rule. Costs for the Department of Social Services Children's Division are included in rule 13 CSR 35-80.010. Cost for residential care facilities are included in 13 CSR 35-80.020.

13 CSR 35-80.010 Residential Foster Care Maintenance Methodology

(4) Inflation/Trend Factor Adjustments.

(A) For the purpose of establishing base year costs, the room and board component will be adjusted based on the change in the USDA Expenditures on Children by Families. For State Fiscal Year 2005, the adjustment will be three and thirty hundredths percent (3.30%). The child-specific daily supervision component will be adjusted based on the change in the Midwest Region Consumer Price Index for all Urban consumers (CPI-U). For State Fiscal Year 2005, the adjustment will be two and ninety-two hundredths percent (2.92%). The annual change in the USDA index (two and twenty hundredths (2.20%)) and CPI-U (one and ninety-four hundredths (1.94%)) was determined for the most recent calendar year and multiplied by a factor of 1.5 for the purpose of converting calendar year 2003 cost data to the State Fiscal Year 2005 rate period.

(B) For the purpose of interim inflation/trend factor adjustments until rates are rebased, the department will submit budget items for the General Assembly's consideration to revise rates in accordance with the results of the rate setting methodology. The change in the USDA Expenditures on Children by Families will be used for the room and board component and the Midwest Region Consumer Price Index for all Urban consumers (CPI-U) will be used for the daily supervision component. Rates will be adjusted in accordance with the Truly Agreed and Finally Passed appropriation by the General Assembly subject to veto by the Governor.

(5) This rule shall terminate on October 15, 2004.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 80—Payment of Residential Facilities

ORDER OF RULEMAKING

By the authority vested in the Children's Division under section 207.020, RSMo 2000, the director adopts a rule as follows:

13 CSR 35-80.020 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 17, 2004 (29 MoReg 314–316). The appendix and forms that accompany this rule were published in the *Missouri Register* on February 17, 2004 (29 MoReg 265–295). The section with changes is reprinted here. This

proposed rule becomes effective thirty (30) days after the publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The order of rulemaking was amended pursuant to a hearing held by Joint Committee on Administrative Rules on June 8, 2004. Section (7) was added to include a termination date.

The Children's Division received one hundred forty (140) letters of comment. One hundred fourteen (114) letters were from board members or otherwise represented sixteen (16) providers affected by the regulations. Substantially all letters requested that the comments be considered for both regulation 13 CSR 35-80.010 and 13 CSR 35-80.020 although the specific comments may only be applicable to one of the regulations. We have therefore addressed all comments under both regulations.

COMMENT: One letter expressed concern that the foster care maintenance costs which would be "priced" under the methodology would affect the current and future POS contracts.

RESPONSE: The litigation brought by the Missouri Child Care Association specifically challenged the previous methodology on the grounds it did not comply with the requirements regarding Title IV-E foster care maintenance payments to residential care providers. The Child Welfare Act strictly limits the services that may be provided and claimed as foster care maintenance. The proposed regulations were designed to identify all foster care maintenance costs that may be claimed under Title V-E and develop a reasonable reimbursement level. We are similarly concerned that the ability to leverage federal funds or recognize the cost for other services provided in the residential setting has been limited and have reviewed payment methodologies approved in other states. The reporting requirements will provide an opportunity to identify the full scope of costs and revenue streams for residential providers. As that information becomes available and we move beyond the current litigation, the division looks forward to working with residential treatment providers to develop favorable reimbursement contracts and ensure adequate services are provided.

COMMENT: Multiple comments objected to the proposed wording in 13 CSR 35-80.010(2)(E) which outlines the statutory process the Children's Division must follow in order to obtain funding. The comments stated that the proposed methodology was budget based and would be in violation of the Child Welfare Act and ruling by the Western District Court in the matter brought by the Missouri Child Care Association d/b/a Missouri Coalition of Children's Agencies.

RESPONSE: Although the issues raised could be resolved by removing subsection (2)(E), the Children's Division believes it is important to include a summary of the state budgetary process in the General Principles section in order to inform the public and affected providers. The division sought assistance from experts in the field of child welfare as a result of the litigation to ensure the methodology meets the requirements of the Child Welfare Act. The proposed methodology is cost based and may result in rates higher than those previously paid. The Department of Social Services (DSS) may only expend funds appropriated by the General Assembly pursuant to the *Missouri Constitution*, therefore, the division needs the opportunity for the appropriations process to work.

COMMENT: One hundred thirty (130) letters of comment included comments objecting to the use of statewide averages as part of the methodology used to determine reimbursement rates. Some comments objected specifically to the use of statewide averages for determination of the room and board component. Additional comments objected to use of statewide averages in any context because they failed to take into consideration the location, size and type of service. Many comments requested that a methodology be changed to facility specific rates. Seventeen (17) letters also stated that payment rates that exceed the reasonable costs for the specific provider would be in violation of federal requirements.

RESPONSE: The litigation initiated by the Missouri Child Care Association makes it necessary to require cost information from all residential child care agencies and to determine the actual cost for, and only for, foster care maintenance in a residential care setting. The division sought assistance from experts in the field of child welfare and developed a methodology using statewide data that is particularly suited in this situation. The division had no desire to encourage additional litigation or administrative costs inherent with individual facility specific rates and current contracts appropriately emphasize client cost differences rather than facility cost differences. Also, facility specific data accurately reflecting foster care maintenance costs and the time necessary for analysis and development of cost controls necessary for facility specific rates prior to adoption of a compliant methodology was not available. The division therefore chose to determine a reasonable cost using facilities appropriately segregated into four (4) classes. The use of a class weighted statewide average allows the maximum flexibility with proper cost controls for unique facility circumstances and encourages efficient providers to provide greater access to clients. Most residential care agencies are small, less than twenty-five (25) clients, and statistically valid time studies necessary to determine costs can be conducted on a statewide basis with minimal intrusion on specific facilities. Numerous competing factors may affect the "accounting" costs reflected by an individual provider. Choices as simple as financing versus investment can create significant cost variances without any difference in the care provided. We have determined that use of a statewide room and board component coupled with the four (4) child-specific daily supervision components will result in a reasonable cost based rate in compliance with the Child Welfare Act.

COMMENT: One hundred twenty-six (126) letters included comments stating that the rule did not provide for an internal appeals process.

RESPONSE: The desk review/audit process will provide an opportunity for individual providers to verify their cost data. The methodology determines the reasonable foster care maintenance cost and an appeals process, which may be applicable to facility specific rates, is unnecessary. An internal appeals process will not be developed to allow providers to challenge applicability of the methodology to their specific facility.

COMMENT: One hundred twenty-nine (129) letters stated that section (4) failed to take into consideration changes in the cost of living or provide for an annual inflation factor.

RESPONSE AND EXPLANATION OF CHANGE: The Children's Division believes 13 CSR 35-80.010(4)—Inflation/Trend Factor Adjustments adequately addresses how those issues will be considered and provides for the specific indices to be used. In response to concerns regarding the inadequacy of the COLA that may be provided state employees, the Midwest Region Consumer Price Index for all Urban consumers (CPI-U) has been adopted as the index for adjusting the child-specific daily supervision component. The division has corrected subsection (4)(A) to reflect that the base rate under the proposed regulation is being established for State Fiscal Year 2005 and to clarify that the percentage change will be determined using the most recent calendar year data available. Subsection (4)(B) has been revised to further clarify that the budget request for interim years will be developed using the indices identified in subsection (4)(A).

COMMENT: Seventy-four (74) of the comment letters stated that the cost of implementation for the private or public entities had not been identified nor did the rule state that all costs of implementation would be reimbursed by the state.

RESPONSE: The applicable fiscal notes have been included with the appropriate rule. Costs for the Department of Social Services

Children's Division are included in rule 13 CSR 35-80.010. Cost for residential care facilities are included in 13 CSR 35-80.020.

13 CSR 35-80.020 Residential Care Agency Cost Reporting System

(7) This rule shall terminate on October 15, 2004.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 98—Psychiatric/Psychology/Counseling/Clinical Social Work Program

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under section 208.201, RSMo 2000, the director adopts a rule as follows:

13 CSR 70-98.020 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 17, 2004 (29 MoReg 327). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Medical Services (DMS) received approximately one hundred fifteen (115) written comments regarding the proposed rule from various individuals.

COMMENT: There were eight (8) comments received expressing concerns about who should serve on the twelve (12) member non-pharmaceutical mental health services committee including: family practice physicians, "practicing" providers (licensed in their respective fields and having experience and practice three (3) years in a mental health clinic), from entities licensed by the Department of Mental Health to serve their target population, and one of each of the three (3) representatives from the four (4) practice areas have one (1) year experience with geriatric clients. Included in the comments was a recommendation to prohibit a disciplined licensee from being on the committee.
RESPONSE AND EXPLANATION OF CHANGE: Section (1) has been changed to recognize the need for a broad spectrum of experience on the committee.

COMMENT: There was one (1) comment that addressed concern that the prior authorization processes should not apply to emergency and inpatient interventions.
RESPONSE: Inpatient hospital stays are exempt from prior authorization. Crisis intervention will not require prior authorization. No changes have been made to the rule as a result of this comment.

COMMENT: There were twenty-six (26) comments regarding amending the proposed rule to exempt residential treatment facilities from the prior authorization process. If these facilities must be included in the prior authorization process, prior authorization should not be required until nine (9) months from the child's date of admission. The contracts between the Children's Division and children residential treatment facilities require a certain weekly amount of individual, family, or group therapy services. Requiring prior authorization of a service that is already designated in the contract seems to be unnecessary, time consuming, and not a good use of already stretched resources.
RESPONSE: Services provided in a residential treatment facility will be subject to prior authorization. The prior authorization process has been developed taking into consideration the needs of children in custody of the state in addition to acceptable standards for delivery of care. The Children's Division was consulted throughout this process. A review was conducted of alternative care children examining the number of units of counseling paid on behalf of the child once the child was admitted to a facility. Based on this review the current plan for prior authorization of non-pharmaceutical mental health services will meet the needs of children in state custody. No changes have been made to the rule as a result of this comment.

COMMENT: There was one (1) comment received asking when nursing facilities would be required to participate in the program.
RESPONSE: Prior authorization will apply to all Medicaid eligible recipients accessing non-pharmaceutical mental health services, regardless of place of residence. No changes have been made to the rule as a result of this comment.

COMMENT: There were three (3) comments requesting a revision of the definition of emergency interventions to exclude prior authorization if a person is at risk of harm to self or others.
RESPONSE: The definition of crisis intervention is: "The situation must be of significant severity to pose a threat to the patient's well being or is a danger to him/herself or others." Crisis intervention services cannot be scheduled nor can they be prior authorized. No changes have been made to the rule as a result of this comment.

COMMENT: There was one (1) comment regarding the language in section (1) of the rule. The commenter suggested reflecting the appropriate titles for the professionals being addressed, i.e., list social worker as Licensed Clinical Social Worker (LCSW) and counselor as Licensed Professional Counselor (LPC).
RESPONSE AND EXPLANATION OF CHANGE: Section (1) has been revised to add the appropriate titles for the various professionals.

COMMENT: There was one (1) comment suggesting the addition of the word "advisory" to the name of the group to reflect statute (section 208.201.5(7), RSMo 2000).
RESPONSE AND EXPLANATION OF CHANGE: Sections (1) and (2) were revised to reflect the committee name as non-pharmaceutical mental health services prior authorization advisory committee.

COMMENT: There was one (1) comment suggesting that in addition to "public hearings," rules for comment should be sent to respective professions/professional associations for feedback prior to any final decisions regarding prior authorization process and that any change in requirements by the prior authorization committee also be presented publicly and sent out to respective professional groups for comment.
RESPONSE: The Division of Medical Services utilizes the assistance of the Medical Advisory Committee for the review of rules prior to filing with the Secretary of State. Prior authorization policy and procedures shall be communicated to the public by way of Medicaid provider bulletins and manuals. No prior approval will be required in the development of the prior authorization process. No changes have been made to the rule as a result of this comment.

COMMENT: There were eleven (11) comments suggesting that the use of prior authorization as a cost containment tool is counter productive to physicians' efforts to provide the best care for patients. Commenters expressed it is an unnecessary administrative burden on physicians and patients and could actually drive up program costs by forcing patients into hospital emergency rooms and possibly cause them to be needlessly institutionalized. If it is used, a system needs to be put in place to measure its effects.
RESPONSE: Instituting prior authorization allows the state better opportunity to monitor the quality and appropriateness of care, effective treatment modules, and the timeliness of services rendered. No changes have been made to the rule as a result of this comment.

COMMENT: There was one (1) comment that suggested the non-pharmaceutical mental health services prior authorization committee should make recommendations to the Division of Medical Services regarding prior authorization process, not develop the process.
RESPONSE AND EXPLANATION OF CHANGE: Upon further reflection, the state agency has determined that the committee shall review and make recommendations to the Division of Medical Services. Section (2) has been changed to charge the committee to review and make recommendations instead of develop the prior authorization process.

COMMENT: There were twenty-two (22) comments received regarding prior authorization and the number of visits required. Comments included requiring prior authorization after eight (8) visits, not four (4); requiring prior authorization after the first sixteen (16) visits minimally; and requiring prior authorization after eight (8) to twelve (12) visits. Commenters submitted the new rule would slow down and limit the amount of therapy provided. Commenters noted there is a trend of lower functioning, higher therapeutic need recipients who demand more therapeutic interventions; the new rule would limit the ability to meet recipients' needs.
RESPONSE AND EXPLANATION OF CHANGE: Section (5) has been deleted and replaced.

COMMENT: There were fifteen (15) comments stating that the public and private costs stated in the proposed rule change were grossly understated.
RESPONSE: The Division of Medical Services determines the policy on which a claim is paid. This rule is not reflected on the cost of services covered but does require prior authorization of those services. There will be a toll-free line for requesting prior authorization. If the prior authorization policy is not followed as instructed, there will be no payments or costs. No changes have been made to the rule as a result of this comment.

COMMENT: There were nineteen (19) comments from individuals working with people with mental illness and from the individuals themselves. Their concerns were that the prior authorization process would make it more difficult to receive services because of the lag time between the fourth session and when sessions could be resumed. The individuals also felt they were capable of making decisions about their mental illness care independently. One recipient thought it meant he would have to have a guardian or that the prior authorization process was a guardian.
RESPONSE: The provider will have four (4) hours with the recipient without prior authorization while the provider initiates the prior authorization process for the first ten (10) to twenty (20) hours of service. The prior authorization request can be phoned, faxed, or mailed to the division designee. The first prior authorization does not require an assessment, treatment plan, or progress notes. The recipient retains the right to work with the mental health provider of their choice. Guardianship is determined through the courts and has nothing to do with the non-pharmaceutical mental health services prior authorization. No changes have been made to the rule as a result of this comment.

COMMENT: There were two (2) comments questioning the use of the Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition (DSM-IV) criteria when billing instructions and the Health Insurance Portability and Accountability Act require ICD-9 diagnosis be utilized for billing purposes.
RESPONSE: The provider may continue use of the DSM-IV diagnosis codes in their records but must bill using the ICD-9 diagnosis codes and definitions. No changes have been made to the rule as a result of this comment.

COMMENT: There was one (1) comment regarding the need to maintain flexibility in Medicaid eligibility codes.
RESPONSE: Instituting prior authorization for high-risk children not in custody of the state allows the state better opportunity to monitor the quality and appropriateness of care, effective treatment modules, and the timeliness of services rendered. The prior authorization process has been developed taking into consideration the needs of children in custody of the state in addition to acceptable standards for delivery of care. Services provided in a residential treatment facility will be subject to prior authorization. No changes have been made to the rule as a result of this comment.

COMMENT: There was one (1) comment questioning if the proposal makes a medical referral a necessary condition for treatment.
RESPONSE: A medical referral is not a necessary condition of treatment. Medical necessity is determined by the assessment, treatment plan, and progress notes submitted with the prior authorization request by the recipient's psychiatrist/psychologist/social worker/counselor. No changes have been made to the rule as a result of this comment.

COMMENT: There was one (1) comment questioning if children and/or families who do not see a physician or psychiatrist for psychotropic medications would no longer receive counseling or therapy services as part of their Missouri Medicaid benefits.
RESPONSE: The question does not apply to this regulation. The rule is prior authorization process for non-pharmaceutical mental health services. No changes have been made to the rule as a result of this comment.

COMMENT: There was one (1) comment questioning if the proposal expands non-pharmaceutical mental health services to adults under Missouri Medicaid.
RESPONSE: This rule establishes the process by which non-pharmaceutical mental health services will be prior authorized in order to be reimbursable by the Missouri Medicaid Program. Licensed Clinical Social Workers and Licensed Professional Counselors will continue to serve recipients from birth through age twenty-one (21). No changes have been made to the rule as a result of this comment.

13 CSR 70-98.020 Prior Authorization Process for Non-Pharmaceutical Mental Health

(1) This rule establishes a Medicaid non-pharmaceutical mental health services prior authorization advisory committee in the Department of Social Services, Division of Medical Services. The advisory committee shall be composed of practicing clinicians who are also licensed in their respective fields. The advisory committee shall be composed of three (3) practicing psychiatrists, three (3) practicing psychologists, three (3) practicing licensed clinical social workers (LCSW), and three (3) practicing licensed professional counselors (LPC). All members shall be appointed by the director of the Department of Social Services. The members of the committee shall represent a broad spectrum of practice including, but not limited to, those providing services to adults, children, children in custody, the geriatric population, and Department of Mental Health clients. The members shall serve for a term of four (4) years, except that of the members first appointed, three (3) shall be appointed for one (1) year, three (3) shall be appointed for two (2) years, three (3) shall be appointed for three (3) years, and three (3) shall be appointed for four (4) years. Members of the committee shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred related to participation on the committee, as approved by the Division of Medical Services out of appropriations made for that purpose.

(2) All persons eligible for medical assistance benefits shall have access to non-pharmaceutical mental health services when they are determined medically necessary when using diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders—Fourth Edition (DSM-IV), published by the American Psychiatric Association, or the most currently published version of the DSM

manual. The services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the Division of Medical Services and shall be included in the Medicaid Psychology/Counseling Provider Manual and Section 13 of the Physician Provider Manual, which are incorporated by reference in this rule and available through the Department of Social Services, Division of Medical Services website at www.dss.mo.gov/dms. The Medicaid non-pharmaceutical mental health services prior authorization advisory committee shall review and make recommendations regarding the prior authorization process to the Division of Medical Services. The Medicaid non-pharmaceutical mental health services prior authorization advisory committee shall hold a public hearing in order to make recommendations to the department prior to any final decisions by the division on the prior authorization process. The recommendations of the non-pharmaceutical mental health services prior authorization advisory committee shall be provided to the Division of Medical Services, in writing, prior to the division making a final determination. The policy requirements regarding the prior authorization process for non-pharmaceutical mental health services shall be available through the Department of Social Services, Division of Medical Services website at www.dss.mo.gov/dms.

(5) The provider may bill for up to four (4) hours of service for diagnosis and testing without prior authorization. If additional services are needed the provider shall initiate the prior authorization process for up to an additional ten (10) to twenty (20) hours of service dependent on the diagnosis and type of service. The first prior authorization does not require an assessment, treatment plan, or progress notes. After the first aggregate fourteen (14) to twenty-four (24) hours of service an additional prior authorization with appropriate documentation is required. The prior authorization request can be phoned, faxed, or mailed to the division designee.

Title 20—DEPARTMENT OF INSURANCE
Division 400—Life, Annuities and Health
Chapter 1—Life Insurance and Annuity Standards

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance under section 374.045, RSMo 2000, the director adopts a rule as follows:

20 CSR 400-1.160 Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 1, 2004 (29 MoReg 538–539). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Insurance received two (2) written comments on the proposed rule. Both written comments were in support of the proposed rule.

Title 20—DEPARTMENT OF INSURANCE
Division 400—Life, Annuities and Health
Chapter 7—Health Maintenance Organizations

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance under section 374.045, RSMo 2000, the director amends a rule as follows:

20 CSR 400-7.200 Provider Selection Standards **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2004 (29 MoReg 539). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Name of Contractor	Name of Officer and Title	Address	Date of Conviction	Debarment Period
Bruner Contracting Company	Cynthia Bruner	218 Delaware, Ste. 211 Kansas City, MO 64105	9/9/03	9/9/03–9/9/04
Cynthia Bruner	N/A	218 Delaware, Ste. 211 Kansas City, MO 64105	9/9/03	9/9/03–9/9/04

The Secretary of State is required by sections 347.141 and 359.481, RSMo 2000 to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one-time publishing of these notices are prescribed by statute. This listing is published pursuant to these statutes. We request that documents submitted for publication in this section be submitted in camera ready 8 1/2" x 11" manuscript.

NOTICE OF WINDING UP OF LIMITED LIABILITY COMPANY

NOTICE OF WINDING UP TO ALL CREDITORS OF AND CLAIMANTS AGAINST **Clayton Gardens Place Condominiums LLC,** a Missouri Limited Liability Company.

On May 24, 2004, Clayton Gardens Place Condominiums LLC, a Missouri Limited Liability Company, filed its notice of winding up with the Missouri Secretary of State.

Dissolution was effective on May 24, 2004.

Said limited liability company requests that all persons and organizations with claims against it present them immediately by letter to the limited liability company at:

Clayton Gardens Place Condominiums LLC
Mr. Dennis Norman
7925 Forsyth Blvd.
Clayton, MO 63105

All claims must include: the name and address of the claimant; the amount claimed; the basis for the claim; and the dates(s) on which the event(s) on which the claim is based occurred.

NOTICE: Because of the dissolution of Clayton Gardens Place Condominiums LLC, any claims against it will be barred unless proceeding to enforce the claim is commenced within three years after the publication date of the notice authorized by statute.

Notice of Dissolution of Limited Liability Company To All Creditors of and Claimants Against Nu-Tech Industrial Systems, L.L.C.

On March 11, 2004, Nu-Tech Industrial Systems, L.L.C., a Missouri limited liability company, filed a Notice of Winding Up with the Missouri Secretary of State. Nu-Tech Industrial Systems, L.L.C., requests that all persons and organizations who have claims against it present them immediately by letter to Nu-Tech Industrial Systems, L.L.C., c/o Richard Rothman, Blitz, Bardgett & Deutsch, L.C., 120 S. Central, Suite 1650, St. Louis, Missouri 63105.
All claims must include: The name and address of the claimant; the amount claimed; the basis of the claim; the date(s) on which the events occurred which provided the basis for the claim; and copies of any other supporting data. Any claim against Nu-Tech Industrial Systems, L.L.C. will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice

NOTICE OF DISSOLUTION OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST INDUSTRIAL AIR SUPPLIES, LLC

On May 12, 2004, Industrial Air Supplies, LLC, filed Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. The dissolution of Industrial Air Supplies, LLC was effective on that date. You are hereby notified that if you believe you have a claim against Industrial Air Supplies, LLC, you must submit a claim to Keith T. Bowman and Michael C. Linertz, 10718 St. Charles Rock Road, St. Ann, MO 63074.

All claims must include: the name and address of the claimant; the amount claimed; the basis of the claim; the dates on which the event occurred which provided the basis for the claim; and copies of any supporting data. Any claim against Industrial Air Supplies, LLC will be barred unless the proceeding to enforce the claim is commenced within three years after publication of this notice.

Rule Changes Since Update to Code of State Regulations

This cumulative table gives you the latest status of rules. It contains citations of rulemakings adopted or proposed after deadline for the monthly Update Service to the *Code of State Regulations*, citations are to volume and page number in the *Missouri Register*, except for material in this issue. The first number in the table cite refers to the volume number or the publication year—27 (2002), 28 (2003) and 29 (2004). MoReg refers to *Missouri Register* and the numbers refer to a specific *Register* page, R indicates a rescission, W indicates a withdrawal, S indicates a statement of actual cost, T indicates an order terminating a rule, N.A. indicates not applicable, RUC indicates a rule under consideration, and F indicates future effective date.

Rule Number	Agency	Emergency	Proposed	Order	In Addition
	OFFICE OF ADMINISTRATION				
1 CSR 10	State Officials' Salary Compensation Schedule				27 MoReg 189 27 MoReg 1724 28 MoReg 1861
1 CSR 10-4.010	Commissioner of Administration		28 MoReg 1557		
1 CSR 15-3.350	Administrative Hearing Commission		29 MoReg 1048		
1 CSR 15-3.380	Administrative Hearing Commission		29 MoReg 1049		
1 CSR 15-3.420	Administrative Hearing Commission		29 MoReg 1049		
1 CSR 15-3.440	Administrative Hearing Commission		29 MoReg 1049		
1 CSR 15-3.480	Administrative Hearing Commission		29 MoReg 1050		
1 CSR 20-4.010	Personnel Advisory Board and Division of Personnel		29 MoReg 577		
	DEPARTMENT OF AGRICULTURE				
2 CSR 30-1.010	Animal Health		29 MoReg 584		
2 CSR 30-1.020	Animal Health		29 MoReg 584		
2 CSR 30-2.020	Animal Health	29 MoReg 571	29 MoReg 584		
2 CSR 30-2.040	Animal Health	29 MoReg 572	29 MoReg 585		
2 CSR 30-3.020	Animal Health	29 MoReg 573	29 MoReg 586		
2 CSR 30-6.020	Animal Health	29 MoReg 573	29 MoReg 586		
2 CSR 80-5.010	State Milk Board		29 MoReg 709		
	DEPARTMENT OF CONSERVATION				
3 CSR 10-5.205	Conservation Commission		29 MoReg 885		
3 CSR 10-5.352	Conservation Commission		29 MoReg 885		
3 CSR 10-5.353	Conservation Commission		29 MoReg 886R		
3 CSR 10-5.425	Conservation Commission		29 MoReg 886		
3 CSR 10-5.552	Conservation Commission		29 MoReg 888		
3 CSR 10-5.553	Conservation Commission		29 MoReg 888R		
3 CSR 10-5.554	Conservation Commission		29 MoReg 888		
3 CSR 10-7.431	Conservation Commission		N.A.	29 MoReg 906	
3 CSR 10-7.432	Conservation Commission		N.A.	29 MoReg 907	
3 CSR 10-7.433	Conservation Commission		N.A.	29 MoReg 907	
3 CSR 10-7.434	Conservation Commission		N.A.	29 MoReg 908	
3 CSR 10-7.436	Conservation Commission		N.A.	29 MoReg 909	
3 CSR 10-7.437	Conservation Commission		N.A.	29 MoReg 909	
3 CSR 10-7.450	Conservation Commission		This Issue		
3 CSR 10-7.455	Conservation Commission		29 MoReg 890		
3 CSR 10-9.565	Conservation Commission		29 MoReg 590	29 MoReg 1058	
3 CSR 10-10.725	Conservation Commission		29 MoReg 164 N.A.	29 MoReg 741 This Issue	
3 CSR 10-11-186	Conservation Commission		This Issue		
3 CSR 10-12.130	Conservation Commission		This Issue		
3 CSR 10-12.140	Conservation Commission		This Issue		
3 CSR 10-12.155	Conservation Commission		This Issue		
3 CSR 10-20.805	Conservation Commission		29 MoReg 590 This Issue	29 MoReg 1058	
	DEPARTMENT OF ECONOMIC DEVELOPMENT				
4 CSR 10-1.010	Missouri State Board of Accountancy		28 MoReg 2089 29 MoReg 591	29 MoReg 993	
4 CSR 10-1.030	Missouri State Board of Accountancy		28 MoReg 2090 29 MoReg 59	29 MoReg 993	
4 CSR 10-1.040	Missouri State Board of Accountancy		28 MoReg 2091R 29 MoReg 592R	29 MoReg 993R	
4 CSR 10-2.005	Missouri State Board of Accountancy		28 MoReg 2091R 28 MoReg 2091 29 MoReg 593R 29 MoReg 593	29 MoReg 993R 29 MoReg 994	
4 CSR 10-2.010	Missouri State Board of Accountancy		28 MoReg 2092R 29 MoReg 594R	29 MoReg 994R	
4 CSR 10-2.021	Missouri State Board of Accountancy		28 MoReg 2093R 29 MoReg 594R	29 MoReg 994R	
4 CSR 10-2.030	Missouri State Board of Accountancy		28 MoReg 2093R 29 MoReg 595R	29 MoReg 994R	
4 CSR 10-2.041	Missouri State Board of Accountancy		28 MoReg 2093 29 MoReg 595	29 MoReg 994	

Rule Number	Agency	Emergency	Proposed	Order	In Addition
4 CSR 10-2.042	Missouri State Board of Accountancy		28 MoReg 2094R 29 MoReg 596R	29 MoReg 994R	
4 CSR 10-2.051	Missouri State Board of Accountancy		28 MoReg 2094 29 MoReg 596	29 MoReg 995	
4 CSR 10-2.061	Missouri State Board of Accountancy		28 MoReg 2099 29 MoReg 600	29 MoReg 995	
4 CSR 10-2.062	Missouri State Board of Accountancy		28 MoReg 2100R 29 MoReg 601R	29 MoReg 995R	
4 CSR 10-2.070	Missouri State Board of Accountancy		28 MoReg 2101 29 MoReg 602	29 MoReg 995	
4 CSR 10-2.072	Missouri State Board of Accountancy		28 MoReg 2102 29 MoReg 603	29 MoReg 995	
4 CSR 10-2.075	Missouri State Board of Accountancy		28 MoReg 2105 29 MoReg 606	29 MoReg 995	
4 CSR 10-2.095	Missouri State Board of Accountancy		28 MoReg 2108 29 MoReg 609	29 MoReg 996	
4 CSR 10-2.101	Missouri State Board of Accountancy		28 MoReg 2109 29 MoReg 611R	29 MoReg 996R	
4 CSR 10-2.111	Missouri State Board of Accountancy		28 MoReg 2110R 29 MoReg 611R	29 MoReg 996R	
4 CSR 10-2.112	Missouri State Board of Accountancy		28 MoReg 2110R 29 MoReg 611R	29 MoReg 996R	
4 CSR 10-2.115	Missouri State Board of Accountancy		28 MoReg 2110R 29 MoReg 611R	29 MoReg 996R	
4 CSR 10-2.120	Missouri State Board of Accountancy		28 MoReg 2111R 29 MoReg 612R	29 MoReg 996R	
4 CSR 10-2.130	Missouri State Board of Accountancy		28 MoReg 2111 29 MoReg 612	29 MoReg 997	
4 CSR 10-2.135	Missouri State Board of Accountancy		28 MoReg 2112 29 MoReg 613	29 MoReg 997	
4 CSR 10-2.140	Missouri State Board of Accountancy		28 MoReg 2112 29 MoReg 613	29 MoReg 997	
4 CSR 10-2.150	Missouri State Board of Accountancy		28 MoReg 2115 29 MoReg 616	29 MoReg 997	
4 CSR 10-2.160	Missouri State Board of Accountancy		28 MoReg 2115 29 MoReg 616	29 MoReg 997	
4 CSR 10-2.180	Missouri State Board of Accountancy		28 MoReg 2116R 29 MoReg 617R	29 MoReg 997R	
4 CSR 10-2.190	Missouri State Board of Accountancy		28 MoReg 2116R 29 MoReg 617R	29 MoReg 998R	
4 CSR 10-2.200	Missouri State Board of Accountancy		28 MoReg 2116 29 MoReg 617	29 MoReg 998	
4 CSR 10-2.210	Missouri State Board of Accountancy		28 MoReg 2117R 29 MoReg 618R	29 MoReg 998R	
4 CSR 10-2.215	Missouri State Board of Accountancy		28 MoReg 2117R 29 MoReg 618R	29 MoReg 998R	
4 CSR 10-3.010	Missouri State Board of Accountancy		28 MoReg 2117 29 MoReg 618	29 MoReg 998	
4 CSR 10-3.020	Missouri State Board of Accountancy		28 MoReg 2118R 29 MoReg 619R	29 MoReg 998R	
4 CSR 10-3.030	Missouri State Board of Accountancy		28 MoReg 2118R 29 MoReg 619R	29 MoReg 999R	
4 CSR 10-3.040	Missouri State Board of Accountancy		28 MoReg 2119R 29 MoReg 620R	29 MoReg 999R	
4 CSR 10-3.060	Missouri State Board of Accountancy		28 MoReg 2119 29 MoReg 620	29 MoReg 999	
4 CSR 10-4.010	Missouri State Board of Accountancy		28 MoReg 2120R 28 MoReg 2120 29 MoReg 621R 29 MoReg 621	 29 MoReg 999R 29 MoReg 999	
4 CSR 10-4.020	Missouri State Board of Accountancy		28 MoReg 2124R 28 MoReg 2124 29 MoReg 625R 29 MoReg 625	 29 MoReg 999R 29 MoReg 1000	
4 CSR 10-4.030	Missouri State Board of Accountancy		28 MoReg 2124R 29 MoReg 625R	29 MoReg 1000R	
4 CSR 10-4.031	Missouri State Board of Accountancy		28 MoReg 2124 29 MoReg 625	29 MoReg 1000	
4 CSR 10-4.040	Missouri State Board of Accountancy		28 MoReg 2125R 29 MoReg 626R	29 MoReg 1000R	
4 CSR 10-4.041	Missouri State Board of Accountancy		28 MoReg 2125 29 MoReg 626	29 MoReg 1000	
4 CSR 10-4.050	Missouri State Board of Accountancy		28 MoReg 2125R 29 MoReg 626R	29 MoReg 1000R	

Rule Number	Agency	Emergency	Proposed	Order	In Addition
4 CSR 15-1.030	Acupuncturist Advisory Committee		29 MoReg 627		
4 CSR 15-2.020	Acupuncturist Advisory Committee		29 MoReg 629		
4 CSR 15-3.010	Acupuncturist Advisory Committee		29 MoReg 629		
4 CSR 15-4.020	Acupuncturist Advisory Committee		29 MoReg 630		
4 CSR 30-2.040	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects		29 MoReg 632		
4 CSR 30-11.025	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects		29 MoReg 632		
4 CSR 40-2.021	Office of Athletics		This Issue		
4 CSR 40-5.030	Office of Athletics		This Issue		
4 CSR 70-2.031	State Board of Chiropractic Examiners		29 MoReg 711		
4 CSR 100	Division of Credit Unions				29 MoReg 680 29 MoReg 859 29 MoReg 920 29 MoReg 1061
4 CSR 110-2.130	Missouri Dental Board		29 MoReg 89 29 MoReg 890	29 MoReg 910W	
4 CSR 110-3.010	Missouri Dental Board		29 MoReg 636		
4 CSR 110-3.020	Missouri Dental Board		29 MoReg 636		
4 CSR 110-3.030	Missouri Dental Board		29 MoReg 636		
4 CSR 110-3.040	Missouri Dental Board		29 MoReg 640		
4 CSR 110-3.050	Missouri Dental Board		29 MoReg 640		
4 CSR 120-1.010	State Board of Embalmers and Funeral Directors		29 MoReg 165	29 MoReg 910	
4 CSR 120-1.020	State Board of Embalmers and Funeral Directors		29 MoReg 165	29 MoReg 910	
4 CSR 120-1.040	State Board of Embalmers and Funeral Directors		29 MoReg 166	29 MoReg 910	
4 CSR 120-2.010	State Board of Embalmers and Funeral Directors		29 MoReg 167R 29 MoReg 167	29 MoReg 911R 29 MoReg 911	
4 CSR 120-2.020	State Board of Embalmers and Funeral Directors		29 MoReg 174	29 MoReg 912	
4 CSR 120-2.022	State Board of Embalmers and Funeral Directors		29 MoReg 174	29 MoReg 912	
4 CSR 120-2.030	State Board of Embalmers and Funeral Directors		29 MoReg 175	29 MoReg 912	
4 CSR 120-2.040	State Board of Embalmers and Funeral Directors		29 MoReg 175R 29 MoReg 175	29 MoReg 913R 29 MoReg 913	
4 CSR 120-2.050	State Board of Embalmers and Funeral Directors		29 MoReg 180	29 MoReg 913	
4 CSR 120-2.060	State Board of Embalmers and Funeral Directors		29 MoReg 180R 29 MoReg 180	29 MoReg 913R 29 MoReg 914	
4 CSR 120-2.070	State Board of Embalmers and Funeral Directors		29 MoReg 186R 29 MoReg 186	29 MoReg 914R 29 MoReg 914	
4 CSR 120-2.071	State Board of Embalmers and Funeral Directors		29 MoReg 192	29 MoReg 915	
4 CSR 120-2.080	State Board of Embalmers and Funeral Directors		29 MoReg 193 29 MoReg 890	29 MoReg 915W	
4 CSR 120-2.090	State Board of Embalmers and Funeral Directors		29 MoReg 194	29 MoReg 915	
4 CSR 120-2.100	State Board of Embalmers and Funeral Directors		29 MoReg 195	29 MoReg 916	
4 CSR 120-2.110	State Board of Embalmers and Funeral Directors		29 MoReg 196	29 MoReg 916	
4 CSR 120-2.115	State Board of Embalmers and Funeral Directors		29 MoReg 196	29 MoReg 916	
4 CSR 150-2.125	State Board of Registration for the Healing Arts		29 MoReg 781		
4 CSR 150-2.153	State Board of Registration for the Healing Arts		29 MoReg 781		
4 CSR 150-4.040	State Board of Registration for the Healing Arts		29 MoReg 785		
4 CSR 150-4.053	State Board of Registration for the Healing Arts		29 MoReg 785		
4 CSR 150-4.205	State Board of Registration for the Healing Arts		29 MoReg 785		
4 CSR 165-2.010	Board of Examiners for Hearing Instrument Specialists		29 MoReg 641		
4 CSR 200-4.020	State Board of Nursing		29 MoReg 641		
4 CSR 210-2.080	State Board of Optometry		29 MoReg 642		
4 CSR 210-2.081	State Board of Optometry		29 MoReg 643R		
4 CSR 220-2.100	State Board of Pharmacy		29 MoReg 713		
4 CSR 220-2.300	State Board of Pharmacy		29 MoReg 89	29 MoReg 916	
4 CSR 220-3.040	State Board of Pharmacy		29 MoReg 970		
4 CSR 220-4.010	State Board of Pharmacy		29 MoReg 973		
4 CSR 220-4.020	State Board of Pharmacy		29 MoReg 973R		
4 CSR 235-1.020	State Committee of Psychologists		29 MoReg 643		
4 CSR 235-1.050	State Committee of Psychologists		29 MoReg 644		
4 CSR 240-3.020	Public Service Commission		29 MoReg 717		
4 CSR 240-3.510	Public Service Commission		29 MoReg 717		
4 CSR 240-3.520	Public Service Commission		29 MoReg 718		
4 CSR 240-3.525	Public Service Commission		29 MoReg 721		
4 CSR 240-3.530	Public Service Commission		29 MoReg 724		
4 CSR 240-3.535	Public Service Commission		29 MoReg 727		
4 CSR 240-3.545	Public Service Commission		29 MoReg 369R 29 MoReg 369		
4 CSR 240-3.555	Public Service Commission		29 MoReg 374		
4 CSR 240-3.560	Public Service Commission		29 MoReg 730		
4 CSR 240-3.565	Public Service Commission		29 MoReg 730		
4 CSR 240-13.015	Public Service Commission		29 MoReg 731		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
4 CSR 240-13.055	Public Service Commission		29 MoReg 786		
4 CSR 240-32.060	Public Service Commission		28 MoReg 2147		
4 CSR 240-32.200	Public Service Commission	29 MoReg 459	29 MoReg 646		
4 CSR 240-33.010	Public Service Commission		29 MoReg 374		
4 CSR 240-33.020	Public Service Commission		29 MoReg 374		
4 CSR 240-33.030	Public Service Commission		29 MoReg 376R		
4 CSR 240-33.040	Public Service Commission		29 MoReg 376		
4 CSR 240-33.060	Public Service Commission		29 MoReg 377		
4 CSR 240-33.070	Public Service Commission		29 MoReg 381		
4 CSR 240-33.080	Public Service Commission		29 MoReg 381		
4 CSR 240-33.110	Public Service Commission		29 MoReg 461		
4 CSR 240-33.150	Public Service Commission		29 MoReg 382		
4 CSR 240-33.160	Public Service Commission		29 MoReg 732		
4 CSR 240-36.010	Public Service Commission		29 MoReg 197	This Issue	
4 CSR 240-36.020	Public Service Commission		29 MoReg 197	This Issue	
4 CSR 240-36.030	Public Service Commission		29 MoReg 198	This Issue	
4 CSR 240-36.040	Public Service Commission		29 MoReg 199	This Issue	
4 CSR 240-36.050	Public Service Commission		29 MoReg 202	This Issue	
4 CSR 240-36.060	Public Service Commission		29 MoReg 203	This IssueW	
4 CSR 240-36.070	Public Service Commission		29 MoReg 203	This IssueW	
4 CSR 240-36.080	Public Service Commission		29 MoReg 204	This IssueW	
4 CSR 263-1.035	State Committee for Social Workers		29 MoReg 651		
4 CSR 263-2.032	State Committee for Social Workers		29 MoReg 653		
4 CSR 263-2.045	State Committee for Social Workers		29 MoReg 653		
4 CSR 263-2.047	State Committee for Social Workers		29 MoReg 654		
4 CSR 263-2.060	State Committee for Social Workers		29 MoReg 654		
4 CSR 263-2.062	State Committee for Social Workers		29 MoReg 654		
4 CSR 263-2.085	State Committee for Social Workers		29 MoReg 655		
4 CSR 263-2.090	State Committee for Social Workers		29 MoReg 655		
4 CSR 263-3.020	State Committee for Social Workers		29 MoReg 655		
4 CSR 263-3.040	State Committee for Social Workers		29 MoReg 656		
4 CSR 263-3.140	State Committee for Social Workers		29 MoReg 657		
	DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION				
5 CSR 50-345.020	Division of School Improvement				29 MoReg 859
5 CSR 80-805.015	Teacher Quality and Urban Education		29 MoReg 791		
5 CSR 80-805.016	Teacher Quality and Urban Education		29 MoReg 793R		
5 CSR 90-7.010	Vocational Rehabilitation		29 MoReg 1051		
5 CSR 90-7.100	Vocational Rehabilitation		29 MoReg 1051		
5 CSR 90-7.200	Vocational Rehabilitation		29 MoReg 1052		
5 CSR 90-7.300	Vocational Rehabilitation		29 MoReg 1052		
5 CSR 90-7.310	Vocational Rehabilitation		29 MoReg 1053		
5 CSR 90-7.320	Vocational Rehabilitation		29 MoReg 1053		
5 CSR 100-200.045	Missouri Commission for the Deaf and Hard of Hearing	29 MoReg 963			
	DEPARTMENT OF TRANSPORTATION				
7 CSR 10-1.020	Missouri Highways and Transportation Commission		29 MoReg 384	This Issue	
7 CSR 10-17.010	Missouri Highways and Transportation Commission		28 MoReg 1563		
	DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS				
8 CSR 10-3.010	Division of Employment Security		29 MoReg 793		
8 CSR 10-3.020	Division of Employment Security		29 MoReg 794R		
8 CSR 70-1.010	Missouri Assistive Technology Advisory Council		29 MoReg 462	29 MoReg 1058	
8 CSR 70-1.020	Missouri Assistive Technology Advisory Council		29 MoReg 463	29 MoReg 1058	
	DEPARTMENT OF MENTAL HEALTH				
9 CSR 10-5.190	Director, Department of Mental Health		29 MoReg 735		
9 CSR 10-5.200	Director, Department of Mental Health		29 MoReg 1054		
9 CSR 10-5.210	Director, Department of Mental Health		29 MoReg 794		
9 CSR 30-3.201	Certification Standards		This Issue		
9 CSR 30-3.202	Certification Standards		This Issue		
9 CSR 30-3.204	Certification Standards		This Issue		
9 CSR 30-3.206	Certification Standards		This Issue		
9 CSR 30-3.208	Certification Standards		This Issue		
9 CSR 30-4.195	Certification Standards		29 MoReg 204	29 MoReg 917	
	DEPARTMENT OF NATURAL RESOURCES				
10 CSR 10-6.060	Air Conservation Commission		29 MoReg 974		
10 CSR 10-6.110	Air Conservation Commission		29 MoReg 976		
10 CSR 10-6.240	Air Conservation Commission		29 MoReg 303R		
10 CSR 10-6.241	Air Conservation Commission		29 MoReg 303		
10 CSR 10-6.250	Air Conservation Commission		29 MoReg 307		
10 CSR 10-6.410	Air Conservation Commission		29 MoReg 985		
10 CSR 20-7.050	Clean Water Commission		28 MoReg 2240	29 MoReg 1001R	
10 CSR 25-17.010	Hazardous Waste Management Commission		29 MoReg 794		
10 CSR 25-17.020	Hazardous Waste Management Commission		29 MoReg 795		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
10 CSR 25-17.030	Hazardous Waste Management Commission		29 MoReg 796		
10 CSR 25-17.040	Hazardous Waste Management Commission		29 MoReg 797		
10 CSR 25-17.050	Hazardous Waste Management Commission		29 MoReg 803		
10 CSR 25-17.060	Hazardous Waste Management Commission		29 MoReg 810		
10 CSR 25-17.070	Hazardous Waste Management Commission		29 MoReg 810		
10 CSR 25-17.080	Hazardous Waste Management Commission		29 MoReg 817		
10 CSR 25-17.090	Hazardous Waste Management Commission		29 MoReg 824		
10 CSR 25-17.100	Hazardous Waste Management Commission		29 MoReg 830		
10 CSR 25-17.110	Hazardous Waste Management Commission		29 MoReg 830		
10 CSR 25-17.120	Hazardous Waste Management Commission		29 MoReg 831		
10 CSR 25-17.130	Hazardous Waste Management Commission		29 MoReg 832		
10 CSR 25-17.140	Hazardous Waste Management Commission		29 MoReg 832		
10 CSR 25-17.150	Hazardous Waste Management Commission		29 MoReg 833		
10 CSR 25-17.160	Hazardous Waste Management Commission		29 MoReg 839		
10 CSR 25-17.170	Hazardous Waste Management Commission		29 MoReg 839		
10 CSR 40-10.020	Land Reclamation Commission		29 MoReg 204		
10 CSR 40-10.050	Land Reclamation Commission		29 MoReg 205		
10 CSR 60-5.010	Public Drinking Water Program		29 MoReg 465		
10 CSR 100-2.010	Petroleum Storage Tank Insurance Fund Board of Trustees		28 MoReg 2156	29 MoReg 540	
10 CSR 100-3.010	Petroleum Storage Tank Insurance Fund Board of Trustees		28 MoReg 2157	29 MoReg 540	
10 CSR 100-4.010	Petroleum Storage Tank Insurance Fund Board of Trustees		28 MoReg 2157	29 MoReg 540	
10 CSR 100-4.020	Petroleum Storage Tank Insurance Fund Board of Trustees		28 MoReg 2163	29 MoReg 540	
10 CSR 140-2.020	Division of Energy				29 MoReg 415
10 CSR 140-2.030	Division of Energy				29 MoReg 415
	DEPARTMENT OF PUBLIC SAFETY				
11 CSR 10-11.020	Adjutant General		29 MoReg 658		
11 CSR 10-11.070	Adjutant General		29 MoReg 658		
11 CSR 10-11.080	Adjutant General		29 MoReg 659		
11 CSR 10-11.100	Adjutant General		29 MoReg 659		
11 CSR 10-11.110	Adjutant General		29 MoReg 659		
11 CSR 10-11.120	Adjutant General		29 MoReg 660		
11 CSR 10-11.210	Adjutant General		29 MoReg 660		
11 CSR 40-5.065	Division of Fire Safety		This Issue		
11 CSR 40-5.090	Division of Fire Safety		This Issue		
11 CSR 45-1.020	Missouri Gaming Commission		29 MoReg 390	29 MoReg 1059	
11 CSR 45-4.260	Missouri Gaming Commission		29 MoReg 535		
11 CSR 45-5.150	Missouri Gaming Commission		29 MoReg 891		
11 CSR 45-5.200	Missouri Gaming Commission		29 MoReg 535		
11 CSR 45-6.030	Missouri Gaming Commission		28 MoReg 2241 29 MoReg 891	29 MoReg 541W	
11 CSR 45-10.020	Missouri Gaming Commission		29 MoReg 894		
11 CSR 45-10.030	Missouri Gaming Commission		29 MoReg 390	29 MoReg 1059	
11 CSR 50-2.400	Missouri State Highway Patrol		29 MoReg 390	29 MoReg 917	
11 CSR 70-2.120	Division of Alcohol and Tobacco Control		29 MoReg 43	29 MoReg 917	
11 CSR 70-2.140	Division of Alcohol and Tobacco Control		29 MoReg 43	29 MoReg 917	
11 CSR 75-13.030	Peace Officer Standards and Training Program		29 MoReg 310	29 MoReg 918	
11 CSR 75-13.060	Peace Officer Standards and Training Program		29 MoReg 310	29 MoReg 918	
11 CSR 75-14.030	Peace Officer Standards and Training Program		29 MoReg 310	29 MoReg 918	
11 CSR 75-16.010	Peace Officer Standards and Training Program		29 MoReg 311	29 MoReg 918	
	DEPARTMENT OF REVENUE				
12 CSR 10-24.440	Director of Revenue		This Issue		
	DEPARTMENT OF SOCIAL SERVICES				
13 CSR 35-80.010	Children's Division	29 MoReg 261	29 MoReg 311	This Issue	
13 CSR 35-80.020	Children's Division	29 MoReg 262	29 MoReg 314	This Issue	
13 CSR 40-2.310	Division of Family Services		29 MoReg 392	29 MoReg 918	
13 CSR 40-2.375	Division of Family Services	This Issue	This Issue		
13 CSR 40-2.380	Division of Family Services		29 MoReg 392	29 MoReg 919	
13 CSR 70-10.015	Division of Medical Services		29 MoReg 736		
13 CSR 70-15.010	Division of Medical Services		29 MoReg 393	29 MoReg 1059	
13 CSR 70-15.110	Division of Medical Services	This Issue	This Issue		
13 CSR 70-15.160	Division of Medical Services		29 MoReg 894		
13 CSR 70-15.190	Division of Medical Services		29 MoReg 840		
13 CSR 70-90.010	Division of Medical Services		29 MoReg 317	29 MoReg 1060	
13 CSR 70-91.010	Division of Medical Services		29 MoReg 317	29 MoReg 1060	
13 CSR 70-91.030	Division of Medical Services		29 MoReg 326	29 MoReg 1060	
13 CSR 70-95.010	Division of Medical Services		29 MoReg 326	29 MoReg 1060	
13 CSR 70-98.020	Division of Medical Services		29 MoReg 327	This Issue	
	ELECTED OFFICIALS				
15 CSR 30-50.040	Secretary of State		29 MoReg 1054		
15 CSR 30-51.170	Secretary of State		29 MoReg 843		
15 CSR 30-51.171	Secretary of State		29 MoReg 400	29 MoReg 1006	
15 CSR 30-51.172	Secretary of State		29 MoReg 844		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
15 CSR 30-51.173	Secretary of State		29 MoReg 845		
15 CSR 30-51.175	Secretary of State		29 MoReg 480	29 MoReg 1006	
15 CSR 30-51.180	Secretary of State		29 MoReg 1055		
15 CSR 30-54.195	Secretary of State		29 MoReg 1055		
15 CSR 30-55.010	Secretary of State		29 MoReg 1056		
	DEPARTMENT OF HEALTH AND SENIOR SERVICES				
19 CSR 25-30.051	Division of Administration		29 MoReg 328	29 MoReg 919	
19 CSR 30-20.015	Division of Health Standards and Licensure		29 MoReg 896		
19 CSR 30-20.021	Division of Health Standards and Licensure		29 Moreg 900		
19 CSR 30-82.090	Division of Health Standards and Licensure		28 MoReg 2254		
19 CSR 30-88.010	Division of Health Standards and Licensure		29 MoReg 536		
19 CSR 60-50	Missouri Health Facilities Review Committee				29 MoReg 859 29 MoReg 1007
19 CSR 60-50.300	Missouri Health Facilities Review Committee		29 MoReg 846		
19 CSR 60-50.400	Missouri Health Facilities Review Committee		29 MoReg 846		
19 CSR 60-50.420	Missouri Health Facilities Review Committee		29 MoReg 847		
19 CSR 60-50.450	Missouri Health Facilities Review Committee		29 MoReg 848		
	DEPARTMENT OF INSURANCE				
20 CSR	Medical Malpractice				27 MoReg 415 28 MoReg 489 29 MoReg 505
20 CSR	Sovereign Immunity Limits				27 MoReg 41 27 MoReg 2319 28 MoReg 2265
20 CSR 200-2.100	Financial Examination		29 MoReg 849		
20 CSR 400-1.160	Life, Annuities and Health		29 MoReg 538	This Issue	
20 CSR 400-7.095	Life, Annuities and Health		29 MoReg 328 29 MoReg 986	29 MoReg 919W	
20 CSR 400-7.200	Life, Annuities and Health		28 MoReg 1715 29 MoReg 539	 This Issue	
20 CSR 500-6.700	Property and Casualty				29 MoReg 754
	MISSOURI CONSOLIDATED HEALTH CARE PLAN				
22 CSR 10-1.020	Health Care Plan		29 MoReg 208	29 MoReg 1060	

Emergency Rules in Effect as of July 15, 2004

		Publication	Expires
Department of Agriculture			
Animal Health			
2 CSR 30-2.020	Movement of Livestock, Poultry and Exotic Animals Within Missouri	29 MoReg 571	August 27, 2004
2 CSR 30-2.040	Animal Health Requirements for Exhibition	29 MoReg 572	August 27, 2004
2 CSR 30-3.020	Brucellosis Quarantine Requirements on Cattle	29 MoReg 573	August 27, 2004
2 CSR 30-6.020	Duties and Facilities of the Market/Sale Veterinarian	29 MoReg 573	August 27, 2004
Department of Economic Development			
Public Service Commission			
4 CSR 240-32.200	General Provisions for the Assignment, Provision and Termination of 211 Service	29 MoReg 459	September 10, 2004
Department of Elementary and Secondary Education			
Missouri Commission for the Deaf and Hard of Hearing			
5 CSR 100-200.045	Temporary Restricted Certification in Education	29 MoReg 963	November 27, 2004
Department of Social Services			
Children's Division			
13 CSR 35-80.010	Residential Foster Care Maintenance Methodology	29 MoReg 261	July 23, 2004
13 CSR 35-80.020	Residential Care Agency Cost Reporting System	29 MoReg 262	July 23, 2004
Family Support Division			
13 CSR 40-2.375	Medical Assistance for Families	This Issue	December 27, 2004
Division of Medical Services			
13 CSR 70-10.015	Prospective Reimbursement Plan for Nursing Facility Services	Next Issue	December 15, 2004
13 CSR 70-10.080	Prospective Reimbursement Plan for HIV Nursing Facility Services	Next Issue	December 15, 2004
13 CSR 70-15.110	Federal Reimbursement Allowance (FRA)	This Issue	December 13, 2004

Executive Orders	Subject Matter	Filed Date	Publication
	2004		
04-01	Establishes the Public Safety Officer Medal of Valor, and the Medal of Valor Review Board	February 3, 2004	29 MoReg 294
04-02	Designates staff having supervisory authority over agencies	February 3, 2004	29 MoReg 297
04-03	Creates the Missouri Automotive Partnership	January 14, 2004	29 MoReg 151
04-04	Creates the Missouri Methamphetamine Education and Prevention Task Force	January 27, 2004	29 MoReg 154
04-05	Establishes a Missouri Methamphetamine Treatment Task Force	January 27, 2004	29 MoReg 156
04-06	Establishes a Missouri Methamphetamine Enforcement and Environmental Protection Task Force	January 27, 2004	29 MoReg 158
04-07	Establishes the Missouri Commission on Patient Safety and supercedes Executive Order 03-16	February 3, 2004	29 MoReg 299
04-08	Transfers the Governor's Council on Disability and the Missouri Assistive Technology Advisory Council to the Office of Administration	February 3, 2004	29 MoReg 301
04-09	Requires vendors to disclose services performed offshore. Restricts agencies in awarding contracts to vendors of offshore services	March 17, 2004	29 MoReg 533
04-10	Grants authority to Director of Department of Natural Resources to temporarily waive regulations during periods of emergency and recovery	May 28, 2004	29 MoReg 965
04-11	Declares regional state of emergency because of the need to repair electrical outages by various contractors, including a Missouri contractor. Allows temporary exemption from federal regulations	May 28, 2004	29 MoReg 967
04-12	Declares emergency conditions due to severe weather in all Northern and Central Missouri counties	June 4, 2004	29 MoReg 968
04-13	Declares June 11, 2004 to be day of mourning for President Ronald Reagan	June 7, 2004	29 MoReg 969
04-14	Establishes an Emancipation Day Commission. Requests regular observance of Emancipation Proclamation on June 19	June 17, 2004	29 MoReg 1045
	2003		
03-01	Reestablishes the Missouri Lewis and Clark Bicentennial Commission	February 3, 2003	28 MoReg 296
03-02	Establishes the Division of Family Support in the Dept. of Social Services	February 5, 2003	28 MoReg 298
03-03	Establishes the Children's Division in the Dept. of Social Services	February 5, 2003	28 MoReg 300
03-04	Transfers all TANF functions to the Division of Workforce Development in the Dept. of Economic Development	February 5, 2003	28 MoReg 302
03-05	Transfers the Division of Highway Safety to the Dept. of Transportation	February 5, 2003	28 MoReg 304
03-06	Transfers the Minority Business Advocacy Commission to the Office of Administration	February 5, 2003	28 MoReg 306
03-07	Creates the Commission on the Future of Higher Education	March 17, 2003	28 MoReg 631
03-08	Lists Governor's staff who have supervisory authority over departments	September 4, 2003	28 MoReg 1556
03-09	Lists Governor's staff who have supervisory authority over departments	March 18, 2003	28 MoReg 633
03-10	Creates the Missouri Energy Policy Council	March 13, 2003	28 MoReg 634
03-11	Creates the Citizens Advisory Committee on Corrections	April 1, 2003	28 MoReg 705
03-12	Declares disaster areas due to May 4 tornadoes	May 5, 2003	28 MoReg 950
03-13	Calls National Guard to assist in areas harmed by the May 4 tornadoes	May 5, 2003	28 MoReg 952
03-14	Temporarily suspends enforcement of environmental rules due to the May 4th [et al.] tornadoes	May 7, 2003	28 MoReg 954
03-15	Establishes the Missouri Small Business Regulatory Fairness Board	August 25, 2003	28 MoReg 1477
03-16	Establishes the Missouri Commission on Patient Safety	October 1, 2003	28 MoReg 1760
03-17	Creates the Governor's Committee to End Chronic Homelessness	October 8, 2003	28 MoReg 1899
03-18	Designates the Missouri State Highway Patrol within the Department of Public Safety as lead agency in state communications	December 10, 2003	29 MoReg 7
03-19	Creates the Public Safety Communications Committee	December 10, 2003	29 MoReg 9
03-20	Requires configuration of two-way radios used by agencies of the state of Missouri to include established interoperability channels as specified by the State Interoperability Executive Committee	December 10, 2003	29 MoReg 12
03-21	Closes state offices Friday, November 28 and Friday, December 26, 2003	October 24, 2003	28 MoReg 1989
03-22	Establishes the Missouri Sexual Offender Registration Task Force	December 10, 2003	29 MoReg 14
03-23	Adds the functions of a State Citizen Council to the Disaster Recovery Partnership	December 10, 2003	29 MoReg 16
03-24	Establishes the Governor's Commission on Hispanic Affairs	November 8, 2003	28 MoReg 2085

Executive Orders	Subject Matter	Filed Date	Publication
03-25	Requires state agencies to adopt cyber security policies and procedures. Designates the Office of Information Technology as principal forum to improve policies and procedures	December 10, 2003	29 MoReg 18
03-26	Reestablishes the Office of Information Technology as the mechanism for coordinating information technology initiatives for the state	December 10, 2003	29 MoReg 21
03-27	Use of Missouri products and services	December 2, 2003	28 MoReg 2209

The rule number and the MoReg publication date follow each entry to this index.

COSMETOLOGY, STATE BOARD OF

DEAF AND HARD OF HEARING, MISSOURI COMMISSION FOR THE

DENTAL BOARD, MISSOURI

DRINKING WATER, PUBLIC PROGRAM

DRIVERS LICENSE BUREAU RULES

DRY-CLEANING ENVIRONMENTAL RESPONSE TRUST FUND

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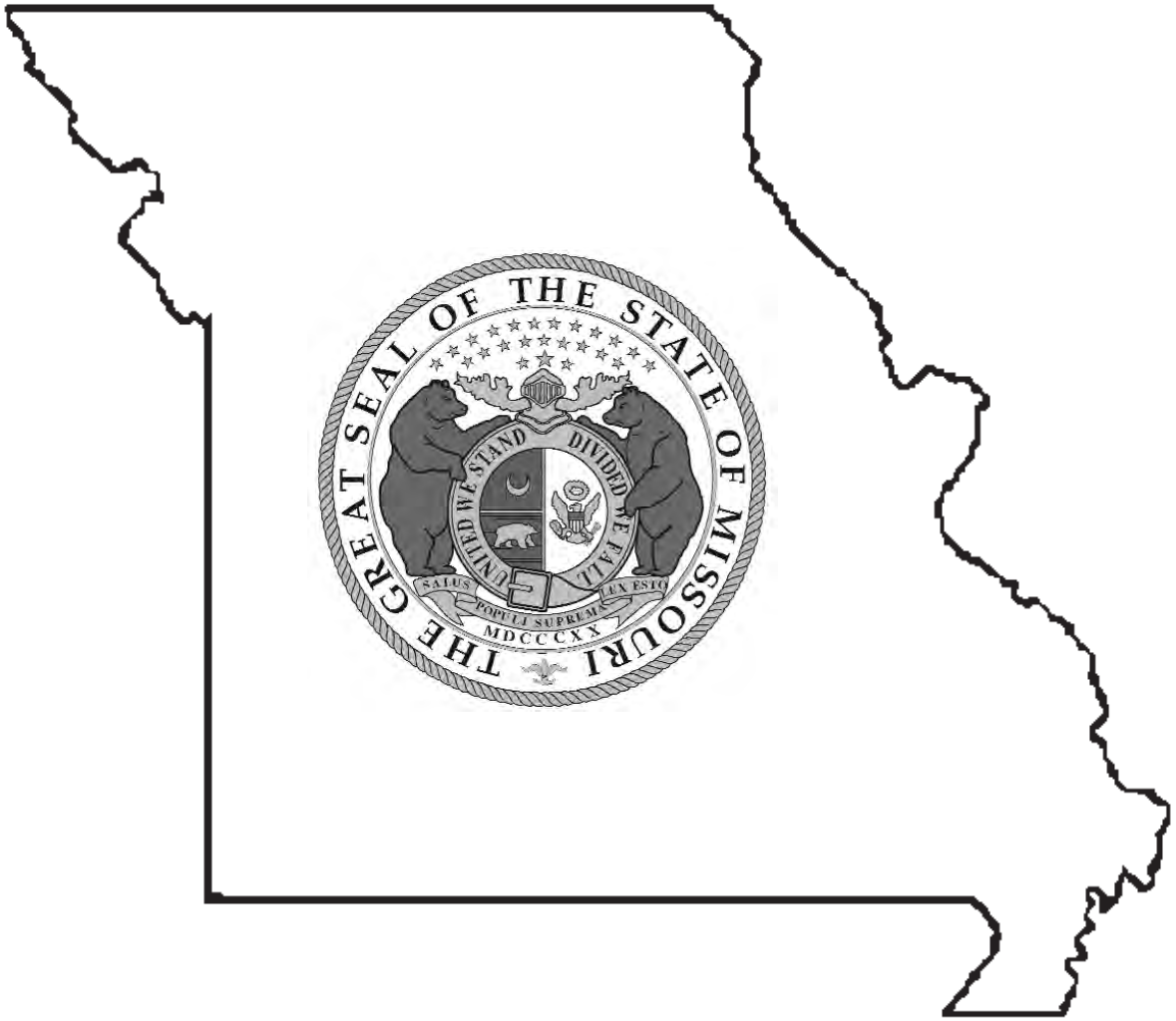

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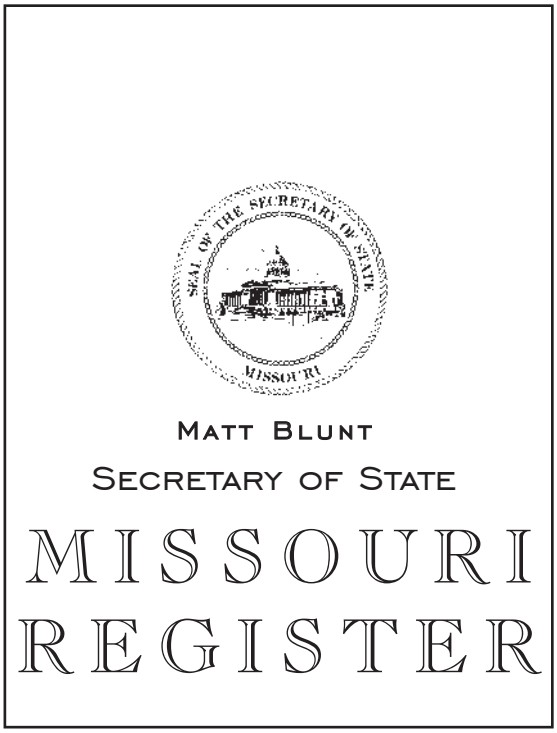

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- **Explain changes to the text of the rule within the Summary of Comments or in the Response and Explanation of Change (it is not necessary to quote rule text here)**
- **Reprint the sections of the rule with changes in the rule text, there is no need to use bold type or brackets in the final order**

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